
BULLETIN

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DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-------------------------------------|-----|
| DOCKET | 3 |
| CALENDAR of January 29, 2019 | |
| Morning | 4/5 |
| Afternoon | 5/6 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, January 8, 2019**

Morning Calendar7

Affecting Calendar Numbers:

212-97-BZ 10 Highpoint Drive aka 140 Merrick Avenue, Staten Island
219-97-BZ 130-11 North Conduit Avenue, Queens
2016-4150-BZ 667 Grand Street, Brooklyn
867-55-BZ 66-15 Borden Avenue, Queens
771-76-BZ 375 Pearl Street, Manhattan
103-79-BZ 25-30 44th Street, Queens
540-84-BZ 341 Soundview Avenue, Bronx
2016-4330-A & 16 & 19 Tuttle Street, Staten Island
 2016-4331-A
2017-30-A 16 Garage Tuttle Street, Staten Island
2017-226-A 18 Tuttle Street, Staten Island
2017-144-A 25-30 44th Street, Queens
2018-23-A & 29 and 31 Herbert Street, Staten Island
 2018-24-A
263-15-BZ 45/47 Little Clove Road, Staten Island
2016-4265-BZ 25 Bleecker Street, Manhattan
2016-4335-BZ 220-21 137th Avenue, Queens
2016-4465-BZ 129 Anderson Street, Staten Island
2017-8-BZ 356-362 East 139th Street, Bronx
2017-56-BZ 1321 Richmond Road, Staten Island
2017-246-BZ 61/63 Crosby Street, Manhattan
2017-20-BZ 550 5th Avenue, Brooklyn
2018-56-BZ 83 Coleridge Street, Brooklyn
2018-64-BZ & 725 Mobile Road, Queens
 2018-65-A

Afternoon Calendar20

Affecting Calendar Numbers:

2017-257-BZ 159 North 4th Street, Brooklyn
2018-123-BZ 2381 Broadway, aka 2381-2387 Broadway, 251-257 W 87th Street, Manhattan
2016-4469-BZ 49-23 Astoria Boulevard, Queens
2017-272-BZ 10-19 46th Road, Queens
2018-51-BZ 11-01 Plainview Avenue, Queens
2018-53-BZ 104 DeGraw Street, Brooklyn
2018-119-BZ 8701 4th Avenue, Brooklyn
2018-138-BZ 257 West 17th Street, Manhattan

Corrected Calendar26

Affecting Calendar Numbers:

2018-49-BZ 1919 East 5th Street, Brooklyn

DOCKETS

New Case Filed Up to January 8, 2019

2018-197-BZ

136-76 39th Avenue, Located on the south side of 39th Avenue between Union Street and 138th Street, Block 4980, Lot(s) 0035, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for uses within (PRC-B1 parking category) contrary to ZR §36-21. C4-3 zoning district. C4-3 district.

2018-198-A

85 Trenton Court, Located on the west side of Trenton Court, 100 ft. north of intersection with Hanover Avenue., Block 6708, Lot(s) 13, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

2018-199-A

36 West 66th Street, Located between 65th and 66th Streets, between Central Park West and Columbus Avenue, Block 1118, Lot(s) 0045, Borough of **Manhattan, Community Board: 7**. Appeal of a New York City Department of Buildings determination. C4-7, R8 district.

2018-200-BZ

100 West 72nd Street, Located on the SW side of W. 72nd Street. 0 ft. from the corner of W. 72nd Street and Columbus Avenue, Block 1143, Lot(s) 7503, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Renzo Gracie Upper West Side – Mixed Martial Arts Studio) located at the sub-cellar level of a 7-story mixed use building contrary to ZR §32-10. C4-6A Upper West Side/Central Park West Historic District. C4-6A district.

018-201-A

46 Kissel Avenue, Located on the west side of Kissel Avenue, 100.02 ft. south of intersection with Snug Harbor Road, Block 0078, Lot(s) 0021, Borough of **Staten Island, Community Board: 1**. Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Lower Density Growth Management Area. R3X district.

2019-1-A

7 Nello Court, Block 7826, Lot(s) 215, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

2019-2-A

11 Nello Court, Block 7826, Lot(s) 216, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

2019-3-A

15 Nello Court, Block 7826, Lot(s) 217, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

2019-4-A

19 Nello Court, Block 7826, Lot(s) 218, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

2019-5-A

23 Nello Court, Block 7826, Lot(s) 220, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X district.

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

CALENDAR

**REGULAR MEETING
JANUARY 29, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 29, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for GNB Auto Repair, Inc., owner; Alessandro Bartellino, lessee.

SUBJECT – Application May 3, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 26, 2018. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

103-70-BZ

APPLICANT – Herrick Feinstein LLP, for 203 East 74 LLC, owner.

SUBJECT – Application July 24, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. C1-9/R8B zoning district.

PREMISES AFFECTED – 203 East 74th Street, Block 1429, Lot 103, Borough of Manhattan.

COMMUNITY BOARD #8M

40-80-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 39 West 23rd Street, LLC, owner.

SUBJECT – Application October 25, 2018 – Amendment of a previously variance (§72-21) to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development and approval of previously constructed rooftop additions totaling 754 square feet. M1-6 Ladies' Mile Historic District.

PREMISES AFFECTED – 35-41 West 23rd Street, 39-41 West 23rd Street, 20-22 West 24th Street, Block 825, Lot(s) 20, 60, 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #5M

498-83-BZ

APPLICANT – Rampulla Associates Architects, for 2131 Hylan Holding, llc, owner.

SUBJECT – Application June 16, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a then existing banquet hall into the residential portion of the lot and permitted accessory parking within the residential portion of the lot. The amendment seeks to demolish the existing building to permit the development of an As-of-Right commercial building retaining the accessory parking on the residential portion of the lot; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. C8-1 & R3X (Lower Density Growth Management Area)

PREMISES AFFECTED – 2131 Hylan Boulevard, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

1059-84-BZ

APPLICANT – Kennedys CMK LLP, for BMS Realty Co., LLC, owner; Hewlett Bay Park, lessee.

SUBJECT – Application July 5, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) to permit changes to the interior partitions and layout. C4-2/C9-2 (Special Ocean Parkway District).

PREMISES AFFECTED – 943/61 Kings Highway aka 2032 Coney Island Avenue, Block 6666, Lot 18 Borough of Brooklyn.

COMMUNITY BOARD #15BK

813-87-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 110 BP Property LLC, c/o Hidrock Properties, owners; TSI Cobble Hill LLC dba New York Sports Club, lessee

SUBJECT – Application August 28, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) which expired on April 12, 2018; Amendment to request a change in hours of operation; Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

CALENDAR

APPEALS CALENDAR

2018-97-A

APPLICANT – Edward Lauria, P.E., for Salvatore Noto, owner.

SUBJECT – Application May 24, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District.

PREMISES AFFECTED – 50 Storer Avenue, Block 7315, Lot 78, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING JANUARY 29, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 29, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-222-BZ

APPLICANT – Gerald J. Caliendo, AIA, P.C., for Avi Tsadok, owner.

SUBJECT – Application July 3, 2017 – Variance (§72-21) to permit the construction of a two-family residence contrary to ZR §23-142 (Floor Area) and ZR §23-45 (Front Yard Requirements). R3A zoning district.

PREMISES AFFECTED – 200-01 116th Avenue, Block 11041, Lot 9, Borough of Queens.

COMMUNITY BOARD #12Q

2018-38-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph LaForgia, owner.

SUBJECT – Application March 15, 2018 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility contrary to ZR §32-15. C1-2/R1-2 zoning district.

PREMISES AFFECTED – 1717 Richmond Road, Block 887, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our

World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2018-118-BZ

APPLICANT – Law Office of Lyra J. Altman, for Abdo Chakkalo and Norma Chakkalo, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing one family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space) and ZR § 23-47 (rear yard). R4 Special Ocean Parkway district.

PREMISES AFFECTED – 710 Avenue W, Block 7184, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-144-BZ

APPLICANT – Akerman LLP, for Lexin NY 551 LLC, owner; Nova Fitness, Inc., lessee.

SUBJECT – Application September 4, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*NOVA Fitness*) to be located on a portion of the third floor of an existing commercial building contrary to ZR §32-10. C5-3 zoning districts.

PREMISES AFFECTED – 551 Madison Avenue, Block 1291, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #5M

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board's Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsey Avenue, Block 6464, Lot 16, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #11BK

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board’s Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 8, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

212-97-BZ

APPLICANT – Snyder & Snyder LLP, for Gunther Development Corp., owner; Pinnacle Towers, LLC, lessee. SUBJECT – Application August 22, 2018 – Amendment of a previously approved Special Permit (§73-30) permitting the operation of a non-accessory radio tower which will expire on September 15, 2018. The amendment seeks to remove the discretionary condition of term and remove a term for the subject use. R1-1 zoning district.

PREMISES AFFECTED – 10 Highpoint Drive aka 140 Merrick Avenue, Block 878, Lot 380, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 73-11 for an amendment to permit, in an R1-1 zoning district, the removal of the term of a special permit, previously granted by the Board, which allows an existing non-accessory radio tower designed to resemble a lighthouse; and

WHEREAS,, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 12, Staten Island, recommends disapproval of this application for an amendment to remove the term of the subject special permit, stating that this radio tower has operated to the mutual benefit of the owner and the community and that it is also beneficial in regards to emergency communications on Staten Island and the growing wireless communication field, while blending into the neighborhood with its lighthouse aesthetic; and

WHEREAS, New York City Council Member Steven Matteo submitted testimony in opposition to this application for an amendment to remove the term of the subject special permit, stating that this radio tower has operated to the mutual benefit of the owner and the community for nearly 20

years and that its success can be attributed in large part to the accountability that the owner has to the community through the Board’s jurisdiction and review; and

WHEREAS, the subject site is located on the south side of Merrick Avenue, in an R1-1 zoning district, on Staten Island; and

WHEREAS, the subject site has approximately 100 feet of frontage along Merrick Avenue, between 123 and 136 feet of depth, 12,947 square feet of lot area and is occupied by a radio tower structure designed to resemble a lighthouse; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1998, when, under the subject calendar number, the Board granted a special permit to permit the construction of a non-accessory radio tower and accessory equipment for a term of twenty (20) years, expiring September 15, 2018, on condition that repairs and service of the tower be limited to Monday through Friday, 9:00 a.m. to 5:00 p.m., that fencing and landscaping be maintained in accordance with the Board-approved drawings, that the antennae and accessory equipment be encased within the stealth structure as depicted for “Alt. Plan A,” that all generators and mechanical equipment be baffled, that there not be any trespassing on neighboring properties to access the subject site and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on November 8, 2001, the Board approved minor changes to the non-accessory radio tower, including modifications to the base of the facility and subdividing the subject site into a separate tax lot and separate zoning lot as it currently exists; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an amendment to eliminate the term; and

WHEREAS, the applicant states that the subject site is in compliance and will continue to be in compliance with applicable conditions for the following reasons: service and repair will continue to be limited to Monday to Friday, 9:00 a.m. to 5:00 p.m., and since this is an unmanned facility, service visits are infrequent and often accomplished by one or two technicians with most work being performed within the structure; that fencing and landscaping will continue to be maintained in accordance with the Board-approved drawings; that all antennas and accessory equipment are contained within the existing lighthouse-like structure and that an accessory building has been demolished pursuant to applicable permits; that the generators and mechanical equipment at the subject site have been baffled and in 2001 the applicant received approval for the replacement of the originally approved generator; that this application was filed prior to the expiration of term; that the subject site has its own access, and the applicant will continue to respect and comply with the condition that there be no trespassing; and that the applicable conditions of the Board’s grant have been included on the certificate of occupancy for the subject site; and

WHEREAS, the applicant submits that the non-

MINUTES

accessory radio tower complies with all applicable rules and regulations regarding radio frequency emissions and that there are no pending violations, summonses or court actions regarding the non-accessory radio tower or the subject site; and

WHEREAS, at hearing, in response to community concerns, the Board discussed whether removal of the term of the subject special permit would be appropriate for this application and finds that, because seeking renewal of the subject special permit would not be onerous, an extension of term of twenty (20) years would be more appropriate to ensure continued compliance with the Board's conditions; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that an extension of term of twenty (20) years is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated September 15, 1998, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of twenty (20) years, expiring September 15, 2038; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received August 22, 2028"-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of twenty (20) years, expiring September 15, 2038;

THAT repairs and service of the tower shall be limited to Monday through Friday, 9:00 a.m. to 5:00 p.m.;

THAT fencing and landscaping shall be maintained in accordance with the Board-approved drawings;

THAT the antennae and accessory equipment be encased within the stealth structure as depicted for "Alt. Plan A";

THAT all generators and mechanical equipment be baffled;

THAT there not be any trespassing on neighboring properties to access the subject site;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 212-97-BZ"), shall be obtained within four (4) years, by January 8, 2023;

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

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, January 8, 2019.

219-97-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp., owner.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on February 23, 2019. R3-2 zoning district.

PREMISES AFFECTED – 130-11 North Conduit Avenue, Block 11864, Lot(s) 13, 16, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a variance previously granted by the Board, which will expire on February 23, 2019; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 8, 2019, and then to decision on that same date; and

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

WHEREAS, the subject site is comprised of two tax lots located on the north side of North Conduit Avenue, bound by 130th Street and 130th Place, in an R3-2 zoning district, in Queens; and

WHEREAS, the site has approximately 172 feet of frontage on North Conduit Avenue, 208 feet of frontage on 130th Street, 178 feet of frontage on 130th Place, 31,150 square feet of lot area and is occupied by a one- (1) story automotive service station (Use Group ("UG") 16), with six (6) multiple product dispenser ("MPD") gasoline pumps, and 15 off-street accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 23, 1999, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction and use of an automotive service station with an accessory convenience store (UG 16) in an R3-2 zoning district, on condition that all work shall substantially conform to BSA-approved plans as they apply to the objections cited in the

MINUTES

application; the following conditions set forth in the Conditional Negative Declaration adopted by reference therein be complied with: the applicant notify the New York City Department of Transportation's ("DOT") Office of Project Analysis six (6) months prior to completion and occupancy of the proposed project so that the DOT can investigate the feasibility of implementing the traffic mitigation measures delineated in the Conditional Negative Declaration dated September 2, 1998, and the applicant implement any of the delineated measures which the DOT deems to be necessary; the site be kept graffiti and debris free; the term of the variance be for 20 years, expiring on February 23, 2019; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; substantial construction be completed within four (4) years, by February 23, 2003; and

WHEREAS, on December 10, 2002, under the subject calendar number, the Board granted an amendment to the variance to permit the alteration to various signage, resulting in a decrease of 43 square feet of total signage, and to permit the addition of a 35 feet by seven (7) feet addition to the existing building, on condition that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; the above condition appear on the certificate of occupancy; a certificate of occupancy be obtained within 18 months, by June 10, 2004; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance to expire on February 23, 2019, the applicant seeks a 20-year extension of the term; and

WHEREAS, at hearing, the Board requested plans showing the existing landscaping on the site—including quantity, size and spacing—and such plans were submitted into the record; and

WHEREAS, with regards to signage at the site, the applicant submits that there is three (3) square feet of non-illuminated and 46.95 square feet of illuminated non-flashing signage on the North Conduit Avenue frontage of the site; there is six (6) square feet of non-illuminated and 49.7 square feet of illuminated non-flashing signage on the 130th Street frontage of the site; and there is 15 square feet of non-illuminated and 21 square feet of illuminated non-flashing signage on the 130th Place frontage of the site in compliance with C1 signage regulations; and

WHEREAS, by letter dated December 17, 2018, the Fire Department stated that it had no objection to the application and confirmed that a review of Fire Department records indicates that the subject automotive service station is current with all Fire Department permits with respect to storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; and

WHEREAS, the Board finds that 20-year extension of the term of the variance, originally granted in 1999, is appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated February 23, 1999, as amended on December 10, 2002, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of 20 years, to expire on February 23, 2039, *on condition* that all work and site conditions shall comply with drawings filed with this application marked "Received December 20, 2018"-Six (6) sheets; and *on further condition*:

THAT the term of the variance shall expire February 23, 2039;

THAT shrubs shall be trimmed and all landscaping be maintained in first rate condition;

THAT the site be kept free of graffiti and debris;

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

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 219-97-BZ"), shall be obtained within one (1) year, by January 8, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

**2016-4150-BZ
CEQR #16-BSA-098K**

APPLICANT – Sheldon Lobel, P.C., for Courtwood Capital LLC, owner; Grandave Fitness Inc. (d/b/a L Train CrossFit), lessee.

SUBJECT – Application March 24, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) on the cellar, first floor and mezzanine of an existing building commercial building. C6-4A zoning district.

PREMISES AFFECTED – 667 Grand Street, Block 2781,

MINUTES

Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated February 23, 2016, acting on Department of Buildings (“DOB”) Application No. 321244159, reads in pertinent part:

Proposed physical culture establishment in C4-4A zoning district not permitted pursuant to ZR 32-10, and referred to BSA for special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, a physical culture establishment (“PCE”) in portions of the cellar level, first floor and mezzanine of an existing four- (4) story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 8, 2019 and then to decision on the same date; and

WHEREAS, the Board was in receipt of four (4) form letters in support of this application; and

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

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

WHEREAS, the subject site is located on the north side of Grand Street, between Manhattan Avenue and Leonard Street, in a C4-4A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage, 80 feet of depth, 2,000 square feet of lot area and is occupied by a four- (4) story plus cellar and mezzanine mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*¹ is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:

- (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 1,612 square feet of floor space at the cellar level with rowing machines, exercise stations, squat and lifting stations, an office and storage for trainers, bathrooms, lockers, and an area for mechanical and electrical equipment; 1,562 square feet of floor area on the first floor with exercise areas for gymnastic rings, climbing ropes, rowing machines, pull and squat stations, box jump stations, a reception area, and a bathroom; and, 431 square feet of floor area on the mezzanine with a stretching and mobility area, seating area, and bathroom; and

WHEREAS, the PCE has been in operation since January 2016, as “LTrain Crossfit,” with the following hours of operation: Monday through Friday, 6:30 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 10:00 a.m. to 1:00 p.m.; and

WHEREAS, the applicant submits that sound attenuation measures have been taken to alleviate potential noise disturbances from the PCE including rubber floor padding, foam padded boxes of varying sizes in weight stations, and insulated ceiling materials; specifically, the applicant has installed spring hangers in the ceiling with full height sound attenuation blanket and acoustical foam, isolated clips in the PCE partitions, and vibration dampening floor material under layers of sound-proof insulation flooring and rubber matting; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located entirely within an existing building and on a heavily travelled commercial street characterized by mixed-use commercial and residential buildings; and

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

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

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant states that an approved fire alarm system is installed throughout the PCE space which is also protected with a wet sprinkler; and

WHEREAS, by letter dated October 29, 2018, the Fire Department stated no objection to the application and confirmed that the premises currently has a residential

sprinkler system and Fire Department permits are current; an application has been filed for the fire alarm system (Alt. II 321620876) and is listed as disapproved; and, once the Board renders a decision on this application, the Fire Department will assist the applicant with obtaining an approval of the fire alarm application; and; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates the PCE will represent an advantage to the community; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-098K, dated March 24, 2016; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the proposed PCE space on the cellar level, first floor and mezzanine, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, the operation of a physical culture establishment in portions of the cellar level, first floor and mezzanine of an existing four- (4) story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 27, 2017-Six (6) sheets”; and *on further condition*:

THAT the term of the PCE grant will expire on January 1, 2026;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT the existing sprinkler system shall be maintained, and the fire alarm system shall be installed and maintained in accordance with DOB Alt. II 321620876;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways

MINUTES

shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2016-4150-BZ”), shall be obtained within one (1) year, by January 8, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

771-76-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Intergate Manhattan LLC, owner.

SUBJECT – Application September 10, 2018 – Amendment of a previously approved Variance (§72-21) that permitted the installation of an illuminated sign that exceeded the surface area along a district boundary and the height above curb level. The Amendment seeks to modify the previously approved sign to permit a digital sign and the new sign will be able to display messages for any principal use on the zoning lot, as opposed to a single principal use on the zoning lot. C6-4 zoning district.

PREMISES AFFECTED – 375 Pearl Street, Block 114 Lot(s) 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to March 5,

2019, at 10 A.M., for continued hearing.

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2016-4330-A & 2016-4331-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Blvd. LLC, owner.

SUBJECT – Application November 14, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 & 19 Tuttle Street, Block 1481, Lot(s) 96 and 300, Borough of Staten Island

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

MINUTES

WHEREAS, the decisions of the Deputy Borough Commissioner, dated October 19, 2016, acting on Department of Buildings (“DOB”) Application Nos. 520296055 and 520296046 read in pertinent part:

GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of 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 502.1 of the 2014 NYC Building Code; and

WHEREAS, these are applications to permit the construction of a two-family detached residence on tax lot 96 and a one-family detached residence on lot 300 with frontage on a portion of Tuttle Street that is not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on these applications on August 15, 2017, after due notice in *The City Record*, with continued hearings on October 31, 2017, March 20, 2018, September 13, 2018, and November 20, 2018, and then to decision on January 8, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and the surrounding area; and

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

WHEREAS, tax lot 96 is located approximately 120 feet south of the southwest corner of Tuttle Street and Devens Street, tax lot 300 is located approximately 112 feet south of the southeast corner of Tuttle Street and Devens Street, on Block 1481, in an R3X zoning district and the Lower Density Growth Management Area, on Staten Island; and

WHEREAS, tax lot 96 resulted from the apportionment of former tax lots 40 and 91 located on Block 1481 into tax lots 40, 45, 91, 92, 93, 94, 95 and 96, evidenced by an Application for Mergers or Apportionments filed with the New York City Department of Finance on May 10, 2016, and approved on May 12, 2016, which was submitted by the applicant into the record; and

WHEREAS, tax lots 96 and 300 are located on opposite sides of a portion of Tuttle Street not duly placed on the official New York City map, as maintained by the Office of the Borough President of Staten Island; and

WHEREAS, the applicant submits that the residences proposed on each of the subject tax lots will comply with all applicable provisions of the Zoning Resolution, including, but not limited to, provisions relating to floor area, floor area ratio, total height, wall height, front, side and rear yards, planting and landscaping; and

WHEREAS, by letter dated January 7, 2019, and accompanied by plans stamped approved on the same date, the Fire Department states that it has no objection to this

application on condition that the proposed residences are fully sprinklered, there be no parking in the locations indicated on the approved plan, a new hydrant be installed as indicated on the approved plan and the portion of Tuttle Street that is a private road have an easement, made part of the applicant’s permanent file with DOB, prohibiting any and all obstructions in the road that would hinder firefighting access and operation; and

WHEREAS, with regards to “practical difficulty or unnecessary hardship,” the applicant states that the location of the subject tax lots without any frontage on a mapped street prevents the as-of-right development of those lots in compliance with GCL § 36 and that the subject applications should be granted because the applicant will provide adequate access in cases of emergency, specifically, the applicant has agreed to create an easement in the unmapped portion of Tuttle Street on which the proposed residences on the subject lots are proposed to front prohibiting any and all obstructions in the road that would hinder firefighting access and operation and to fully sprinkler the proposed residences; and

WHEREAS, the applicant submits that an Amended Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Tuttle Homeowners Association, Inc., indicating that the Fire Department “shall have an easement across association property for the purpose of performing any duty necessary to carry out their function, was approved by the New York State Attorney General on May 31, 2017; and

WHEREAS, the Board required, as a condition of approval, the recording of a restrictive declaration against the subject sites regarding maintenance of the unmapped portion of Tuttle Street and incorporating the Fire Department’s conditions of approval and such declaration was recorded on January 10, 2019; and

WHEREAS, pursuant to the declaration, the Declarant, identified as the fee owner of the subject sites, and his successors/and/or assigns agree to maintain the street in a good state of repair and cleanliness, including but not limited to the following: maintaining the paved surfaces of the street in good repair; maintaining street lights, if any, in good working order; assuring that street lights, if any, operate during hours of darkness; replacing street lights, if any, when needed; snow plowing at such times as the accumulated snow falls in any 12-hour period exceed two inches; maintaining, repairing and replacing of dry wells, sewer pipes, wires, conduits, utility lines servicing more than one unit (whether or not such lines and facilities are on Homeowner Association Property) shall be the responsibility of, and an expense of, the Homeowner’s Association); and

WHEREAS, in addition, in response to the Board’s request, the applicant provided a Builder’s Pavement Plan for the unmapped portion of Tuttle Street, showing continuity of the sidewalks in front of the proposed residences; and

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

Therefore it is Resolved, that the decisions of the

MINUTES

Department of Buildings dated October 19, 2016, acting on DOB Application Nos. 520296055 and 520296046, are modified by the power vested in the Board by Section 36 of the General City Law, and that these appeals are granted, limited to the decisions noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 24, 2018”-Five (5) sheets; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the residences shall be full sprinklered;

THAT no parking shall be permitted in the shade area indicated on the plans approved for Fire Department Access and Hydrant Requirements subject to letter of January 7, 2019;

THAT a new hydrant shall be installed as indicated on the on the plans approved for Fire Department Access and Hydrant Requirements subject to letter of January 7, 2019;

THAT the portion of Tuttle Street that is a private road shall have an easement in place prohibiting any and all obstructions in the road that would hinder firefighting access and operations and such easement shall be made part of the applicant’s permanent file with the Department of Buildings;

THAT the Builder’s Pavement Plan shall be approved prior to the issuance of any building permits;

THAT a certificate of occupancy, noting the subject calendar numbers (“BSA Cal. Nos. 2016-4330-A and 2016-4331-A”), shall be obtained within four (4) years, by January 8, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

2017-30-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard LLC, owner.

SUBJECT – Application January 27, 2017 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 Garage Tuttle Street, Block 1481, Lot 96, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, January 8, 2019.

2017-226-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard, LLC, owner.

SUBJECT – Application July 11, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X zoning district.

PREMISES AFFECTED – 18 Tuttle Street, Block 1481, Lot 92, Borough of Staten Island.

COMMUNITY BOARD # 1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated June 30, 2017, acting on Department of Buildings (“DOB”) Application No. 520306188 read in pertinent part:

GCL 36, BC 501.3.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of buildings fronting directly upon a legally mapped street or frontage space contrary to Sec 501.3.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of a single-family residence with frontage on a portion of Tuttle Street that is not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on these applications on August 15, 2017, after due notice in *The City Record*, with continued hearings on October 31, 2017, March 20, 2018, September 13, 2018, and November 20, 2018, and then to decision on January 8, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and the surrounding area; and

WHEREAS, Community Board 1, Staten Island, recommends denial of this application and that the proposed residence be reoriented to face Home Place; and

WHEREAS, the subject site is located on the north side of Home Place, between Willowbrook Road and Lyon Place,

MINUTES

in an R3X zoning district and the Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site resulted from the apportionment of former tax lots 40 and 91, located on Block 1481, into tax lots 40, 45, 91, 92, 93, 94, 95 and 96, evidenced by an Application for Mergers or Apportionments filed with the New York City Department of Finance on May 10, 2016, and approved on May 12, 2016, which was submitted by the applicant into the record; and

WHEREAS, this application was heard and decided along with applications to permit development of tax lot 96 (16 Tuttle Street, BSA Cal. No. 2016-4330-A) and tax lot 300 (19 Tuttle Street, BSA Cal. No. 2016-4331-A), contrary to GCL § 36, both of which were approved on condition under a separate resolution; and

WHEREAS, the applicant submits that the proposed residence will comply with all applicable provisions of the Zoning Resolution, including, but not limited to, provisions relating to floor area, floor area ratio, total height, wall height, front, side and rear yards, planting and landscaping; and

WHEREAS, the applicant originally proposed to orient the proposed single-family residence towards Tuttle Place; and

WHEREAS, by letter dated July 25, 2017, the Fire Department states that the location of the proposed building and geometry of dead-end Tuttle Street do not properly meet the functional requirements outlined in the New York City Fire Code with regards to frontage space and recommends that the application be approved provided that the building fronts on Home Place; and

WHEREAS, in response to comments from the Community Board, the Fire Department and the Board, the applicant reoriented the proposed residence towards Home Place; and

WHEREAS, by letter dated January 7, 2019, and accompanied by plans stamped approved on the same date, the Fire Department states that it has no objection to this application, as revised, on condition that there be no parking in the locations indicated on the approved plan, a new hydrant be installed as indicated on the approved plan and the portion of Tuttle Street that is a private road have an easement, made part of the applicant's permanent file with DOB, prohibiting any and all obstructions in the road that would hinder firefighting access and operation; and

WHEREAS, the applicant states that the subject application should be granted because the applicant will provide adequate access in cases of emergency, specifically, the applicant has agreed to create an easement in the unmapped portion of Tuttle Street to be improved as a private road in connection with this application prohibiting any and all obstructions in the road that would hinder firefighting access and operation and to fully sprinkler the proposed residences; and

WHEREAS, the applicant submits that an Amended Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Tuttle Homeowners Association, Inc., indicating that the Fire Department "shall

have an easement across association property for the purpose of performing any duty necessary to carry out their function, was approved by the New York State Attorney General on May 31, 2017; and

WHEREAS, the Board required, as a condition of approval, the recording of a restrictive declaration against the subject sites regarding maintenance of the unmapped portion of Tuttle Street and incorporating the Fire Department's conditions of approval and such declaration was recorded on January 10, 2019; and

WHEREAS, pursuant to the declaration, the Declarant, identified as the fee owner of the subject sites, and his successors/and/or assigns agree to maintain the street in a good state of repair and cleanliness, including but not limited to the following: maintaining the paved surfaces of the street in good repair; maintaining street lights, if any, in good working order; assuring that street lights, if any, operate during hours of darkness; replacing street lights, if any, when needed; snow plowing at such times as the accumulated snow falls in any 12-hour period exceed two inches; maintaining, repairing and replacing of dry wells, sewer pipes, wires, conduits, utility lines servicing more than one unit (whether or not such lines and facilities are on Homeowner Association Property) shall be the responsibility of, and an expense of, the Homeowner's Association); and

WHEREAS, in addition, in response to the Board's request, the applicant provided a Builder's Pavement Plan for the unmapped portion of Tuttle Street, showing continuity of the sidewalks; and

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

Therefore it is Resolved, that the decisions of the Department of Buildings dated June 30, 2017, acting on DOB Application No. 520306188, are modified by the power vested in the Board by Section 36 of the General City Law, and that these appeals are granted, limited to the decisions noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 24, 2018"-Five (5) sheets; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT no parking shall be permitted in the shade area indicated on the plans approved for Fire Department Access and Hydrant Requirements subject to letter of January 7, 2019;

THAT a new hydrant shall be installed as indicated on the on the plans approved for Fire Department Access and Hydrant Requirements subject to letter of January 7, 2019;

THAT the portion of Tuttle Street that is a private road shall have an easement in place prohibiting any and all obstructions in the road that would hinder firefighting access and operations and such easement shall be made part of the applicant's permanent file with the Department of Buildings;

THAT the Builder's Pavement Plan shall be approved prior to the issuance of any building permits;

MINUTES

THAT a certificate of occupancy, noting the subject calendar number (“BSA Cal. No. 2017-226-A”), shall be obtained within four (4) years, by January 8, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.

SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-101-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & R Rockaway, LLC, owner; Burn Fitness 247, LLC, lessee.

SUBJECT – Application April 5, 2017 – Special Permit (§73-36) to permit a physical culture establishment (*Burn Fitness*) within an existing commercial building. C2-3/R5D zoning district.

PREMISES AFFECTED – 104-06 Rockaway Beach Boulevard, Block 16176, Lot 001, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 28, 2017, acting on Alteration Application No. 421413848, reads in pertinent part:

“The proposal to occupy the premises as a Physical Culture Establishment . . . is contrary to Section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R5D (C2-3) zoning district, the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, and then to decision on January 8, 2019; and

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

WHEREAS, the subject site is located on the northeast corner of Rockaway Beach Boulevard and Beach 105th Street, in an R5D (C2-3) zoning district, in Queens; and

WHEREAS, the subject site has approximately 415 feet of frontage along Rockaway Beach Boulevard, 155 feet of frontage along Beach 105th Street, 64,352 square feet of lot area and is occupied by a one-story mixed-use commercial and community-facility building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 24, 2001, when, under BSA Calendar Number 252-00-BZ, the Board granted a special permit to allow the operation of a PCE within a portion of the first floor of the subject building for a term of ten (10) years, expiring April 24, 2011, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation of the PCE be limited to Monday to Friday, 5:30 a.m. to 11:00 p.m., and Saturday and Sunday, 6:30 a.m. to 8:00 p.m., that fire-protection measures, including a smoke detection system connected to a Fire Department-approved central station, be provided and maintained in accordance with the Board-approved plans and that the above conditions appear on the certificate of occupancy; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

(1) that such *use* is so located as not to impair

MINUTES

- the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or

restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 5,807 square feet of floor space on the first floor, including a reception area, group fitness and aerobics areas, a cardiovascular fitness area, a free-weights training area, locker rooms and restrooms and accessory offices; and

WHEREAS, the PCE has been in operation as Burn Fitness since, with the following hours of operation: Monday through Friday, 5:30 a.m. to 11:00 p.m., and Saturday and Sunday, 6:30 a.m. to 8:00 p.m.; and

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

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

WHEREAS, the applicant states that the PCE provides an exercise room for classes, instruction and programs for physical improvement and training, body building and weight reduction as well as yoga and aerobics classes; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

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

WHEREAS, by letter dated December 8, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-

MINUTES

02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an R5D (C2-3) zoning district, the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 5, 2017”-Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring January 8, 2029;

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

THAT minimum 3'-0" wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space, as indicated on the Board-approved drawings;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-101-BZ”), shall be obtained within one (1) year, by January 8, 2020;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 8, 2019.

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for adjourned hearing.

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2016-4335-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 193 Street LLC, Joseph Atarien, President, owner.

SUBJECT – Application November 21, 2016 – Variance (§72-21) proposed construction of a two story, two family dwelling contrary to Floor Area Ratio and Maximum Lot Coverage (ZR 23-141), Number of Dwelling Units (ZR 23-22) and Front Yard (ZR 23-45). R3X zoning district.

PREMISES AFFECTED – 220-21 137th Avenue, Block 13112, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for adjourned hearing.

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for adjourned hearing.

MINUTES

2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – Variance (§72-21) to permit the construction of a new school (UG 3) (*Academic Leadership Charter School*) contrary to ZR §24-11 (Maximum Allowable Lot Coverage), ZR §24-522 (Heights and Setbacks) and ZR §2436 (Rear Yard). R6 zoning district.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

2017-56-BZ

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

SUBJECT – Application February 24, 2017 – Variance (§72-21) to permit construction of a cellar and three (3) story residential condominium with six (6) dwelling units and ten (10) off-street parking spaces contrary to ZR §22-11 (multi-family buildings not permitted in an R1-2 zoning district; ZR §§ 23-00 & 25-00) no bulk or parking regulations for multi-family buildings. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

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

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for adjourned hearing.

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – Variance (§72-21) to permit commercial retail (UG 6) on the level of the ground floor contrary to ZR §42-14. M1-5B (SoHo Cast Iron Historic District).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – Variance (§72-21) to permit legalization of a Physical Cultural Establishment (*Harbor Fitness*) on a portion of the cellar and first floors contrary to ZR §§22-10 & 32-10. R6B & C4-3A zoning district.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for adjourned hearing.

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – Special Permit (§73-622) for the enlargement of an existing single family-home contrary to floor area, open space and lot coverage (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for adjourned hearing.

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 8, 2018
1:00 P.M.**

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

ZONING CALENDAR

2017-257-BZ

CEQR #18-BSA-25K

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

SUBJECT – Application October 23, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*CorePower Yoga*) in the cellar and ground floor of an existing five-story building contrary to ZR §42-10. M1-2/R6B zoning district.

PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated August 1, 2017, acting on Department of Buildings (“DOB”) Application No. 321612331, reads in pertinent part:

Proposed physical and culture establishment is not permitted pursuant to ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a M1-2/R6B zoning district and in the Special Mixed Use District, a physical culture establishment (“PCE”) in portions of the cellar level and first floor of an existing five- (5) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the north

side of North 4th Street, between Bedford Avenue and Driggs Avenue, in an M1-2/R6B zoning district and in the Special Mixed Use District, in Brooklyn; and

WHEREAS, the site has approximately 76 feet of frontage, 100 feet of depth, 7,550 square feet of lot area and is occupied by a five- (5) story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 5,870 square feet of floor space on the cellar level with two (2) yoga studios, men's and women's restrooms and showers, a lobby and reception area, changing area, ADA lift, and storage; and 3,979 square feet of floor area on the first floor with the entrance to the PCE and ADA lift access; and

WHEREAS, the PCE has been in operation since September 2017, as "CorePower Yoga," with the following hours of operation: Monday through Friday, 5:00 a.m. to 10:30 p.m., and Saturday and Sunday, 7:30 a.m. - 8:00 p.m.; and

WHEREAS, though the main portion of the PCE space is separated from residential uses in the subject building by the parking area at the ground floor, the applicant represents that yoga is a quiet activity that does not produce loud noises, loud music is not used, and the space was soundproofed for any additional adverse noise impacts; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in a neighborhood characterized predominantly by commercial and mixed-use buildings; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement utilizing yoga; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE fits with the mixed-use character of the neighborhood, approximately two-thirds of the PCE is located within the cellar, and the applicant does not anticipate the yoga studio will create any nuisances; and

WHEREAS, the applicant states that an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—was installed throughout the PCE space, which is also protected by a wet sprinkler system; and

WHEREAS, by letter dated December 17, 2018, the Fire Department stated no objection to this application and confirmed that the premises is protected with a sprinkler system and has a sprinkler monitoring central office connection; permits for the systems are current according to Fire Department records; and, the requirement for a fire alarm system is not applicable for this establishment and requested that the applicant withdraw the application for the new fire alarm system; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-25K, dated September 1, 2017; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the proposed PCE space on the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site partially located within a M1-2/R6B zoning district and in the Special Mixed Use District, the operation of a physical culture establishment in portions of the cellar level and first floor of an existing five- (5) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on*

MINUTES

condition that all work shall substantially conform to drawings filed with this application marked “Received January 7, 2019”-Six (6) sheets; and *on further condition:*

THAT the term of the PCE grant will expire on September 1, 2027;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

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

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-257-BZ”), shall be obtained within one (1) year, by January 8, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

2018-123-BZ

CEQR #19-BSA-017M

APPLICANT – Law Office of Jay Goldstein, PLLC, for 251 W87th Street Associates, owner; Broadway Bar Method LLC, lessee.

SUBJECT – Application July 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Bar Method) to be in a portion of the cellar and first floor of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District.

PREMISES AFFECTED – 2381 Broadway aka 2381-2387 Broadway, 251-257 W 87th Street, Block 1235, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated October 2, 2018, acting on Department of Buildings (“DOB”) Application No. 123424990, reads in pertinent part:

Proposed Physical Culture Establishment is not [] permitted as-of-right per ZR 32-10. Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Special Enhanced Commercial District, a physical culture establishment (“PCE”) in portions of the cellar level and first floor of an existing seven- (7) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

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

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

WHEREAS, the subject site is located on the northwest corner of Broadway and West 87th Street, in a C4-6A zoning district and in the Special Enhanced Commercial District, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage on Broadway, 90 feet of frontage on West 87th Street, 9,064 square feet of lot area and is occupied by a seven- (7) story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

1. that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
2. that such *use* contains:
 - i. one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - ii. a swimming pool of a minimum 1,500 square feet; or
 - iii. facilities for classes, instruction and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

programs for physical improvement, body building, weight reduction, aerobics or martial arts; or

- iv. facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

1. the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
2. the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 1,418 square feet of floor space on the cellar level with storage, utility and laundry areas, and accessory PCE space; and 3,069 square feet of floor area on the first

floor with two (2) exercise studios, an office, bathrooms, lockers, showers, retail areas, a juice bar, an office, and reception area; and

WHEREAS, the PCE has been in operation since September 2018, as “The Bar Method,” operating daily from 5:30 a.m. to 9:30 p.m.; and

WHEREAS, the applicant submits that, though the PCE offers low impact, ballet-style classes that do not utilize gym machinery, sound attenuation measures have been provided to ensure that the PCE use will have no adverse impacts on the adjacent uses; specifically, all flooring in the studios contain noise control underlayment; all partitions of the studios are isolated from the adjacent structures using sheetrock with sound-attenuated batt insulation; studio ceilings are protected with isolated hangers; and, all studio penetrations through the partitions and ceilings are insulated and STC acoustical separations are installed to provide the following STC levels: partitions at STC 60, flooring at STC 64, and the ceiling at STC 69; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located entirely within an existing building and in a neighborhood comprised of commercial office buildings, community facilities, retail stores, and residential uses; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement with instructed group exercise; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because most patrons walk or use mass transit to access the PCE, and the area is already heavily trafficked by retail customers and building tenants; and

WHEREAS, the applicant states that an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—is installed throughout the PCE space; and

WHEREAS, by letter dated December 17, 2018, the Fire Department objected to permitting any occupants in the cellar of the subject PCE because no means of egress is provided, and stated that exiting through the building’s common area and through a storage room to exit the cellar is not permitted as per the New York City Construction Code and a special permit should be denied if the cellar space is

MINUTES

used for occupancy; and

WHEREAS, in response, the applicant filed amended plans demonstrating that the PCE cellar space is not open to the public and its access is limited only to accessory employee uses; and

WHEREAS, by letter dated December 28, 2018, the Fire Department stated no objection to the application and confirmed that they reviewed the amended plans filed with the BSA; a voluntary fire alarm system has been reviewed, approved and installed in the PCE space, and such system shall be maintained according to 2014 Fire Code Section 907.20; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19BSA017M, dated October 19, 2018; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the proposed PCE space on the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Special Enhanced Commercial District, the operation of a physical culture establishment in portions of the cellar level and first floor of an existing seven- (7) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 28, 2018- Seven (7) sheets”; and *on further condition*:

THAT the term of the PCE grant will expire on September 1, 2028;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT the existing fire alarm system shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be

provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-123-BZ”), shall be obtained within one (1) year, by January 8, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 8, 2019.

2016-4469-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Winston Network, Inc., owner.

SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*CrossFit*) within an existing one store commercial building contrary to ZR §42-10 located in M1-4 zoning district.

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-51-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Tannenbaum, owner.

SUBJECT – Application April 11, 2018 – Variance (§72-21) to permit the construction of a two-story single-family home with an attic that does not provide the required lot area and lot width, front yard, side yard, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461(a) and 23-631(d). R5 zoning district.

PREMISES AFFECTED – 11-01 Plainview Avenue, Block 15618, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 104 DeGraw Street, Block 329, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

2018-119-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 8701 4th Avenue LLC, owner.

SUBJECT – Application July 17, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Dolphin Fitness) to be located on a portion of the first floor and the entirety of the second floor of a commercial building contrary to ZR §32-10. C4-2A Special Bay Ridge District.

PREMISES AFFECTED – 8701 4th Avenue, Block 6050, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

2018-138-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for 257 Associates Borrower LLC, owner; BBP Fitness LLC, lessee.

SUBJECT – Application August 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Brick New York in a portion of the cellar and first floor of an existing building) contrary to ZR 32-10. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, Block 767, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to March 19,

MINUTES

*CORRECTION

This resolution adopted on October 11, 2018, under Calendar No. 2018-49-BZ and printed in Volume 103, Bulletin Nos. 41-43, is hereby corrected to read as follows:

2018-49-BZ

APPLICANT – Law Office of Lyra J. Altman, for Solomon S. Salem, owner.

SUBJECT – Application April 2, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area, lot coverage and open space (ZR §23-142) and wall height (ZR §23-631-(b)) R2X (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1919 East 5th Street, Block 6681, Lot 492, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 2, 2018, acting on Department of Buildings (“DOB”) Application No. 321636057 reads in pertinent part:

The proposed enlargement of the existing one family residence in an R2X zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-142 of the Zoning Resolution;
2. [...]
3. [...]
4. Creates non-compliance with respect to perimeter wall height of building and is contrary to Section 23-631(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2X zoning district and the Special Ocean Parkway District, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for floor area ratio and perimeter wall height contrary to ZR §§ 23-142 and 23-631(b); and

WHEREAS, a public hearing was held on this application on September 27, 2018 after due notice by publication in *The City Record*, with a continued hearing on October 11, 2018, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and

surrounding neighborhood; and

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

WHEREAS, the Board was in receipt of one form letter in support of this application; and

WHEREAS, the subject site is located on the west side of East 5th Street, between Avenue R and Avenue S, in an R2X zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 5th Street, a depth of 100 feet, 4,000 square feet of lot area and is occupied by a detached one and one-half story plus cellar one-family dwelling containing 2,369 square feet of floor area, a floor area ratio (“FAR”) of 0.59, a front yard of 23’-7.5”, a rear yard of 19’-3”, side yards of 3’-10.25” and 8’-0.5”, a perimeter wall height of 13’-8”, building height of 28 feet, and a detached garage located in the rear yard; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for

MINUTES

lot coverage, open space, floor area, side yard, rear yard or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing detached dwelling by extending the dwelling into the rear yard and front yard, constructing a greenhouse on the first floor in the rear yard, and demolishing the existing garage and replacing it with a parking pad, resulting in a two-story plus attic and cellar dwelling with 5,108 square feet of floor area (1.28 FAR), a 20-foot rear yard, a 15-foot front yard, side yards with widths of 6'-2.75" and 3'-10.25", a perimeter wall height of 24 feet, and a total building height of

34'-11"; and

WHEREAS, at the subject site, a maximum of 0.85 FAR (3,400 square feet of floor area) or 1.02 FAR (4,080 square feet of floor area), including an increase in the permissible floor area ratio by 20 percent if such increase in floor area is located directly under a sloping roof that rises at least three and one half inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five and eight feet, is permitted pursuant to ZR § 23-142 and a maximum perimeter wall height of 21 feet is permitted pursuant to ZR § 23-631(b); and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2X zoning district (the "Study Area") concluding that, of the 52 qualifying residences, 10 residences (19 percent) have an FAR greater than 1.02, ranging from 1.02 to 1.32, including the residence located immediately to the south of the subject site, which has an FAR of 1.27; and

WHEREAS, with regards to the perimeter wall height, the applicant provided measurements of the properties located immediately adjacent to the subject premises demonstrating that the property located to the immediate south on tax lot 490, 1925 East 5th Street, is a single- or two-family detached residence with an existing non-complying perimeter wall facing the street with a height of 24 feet; and

WHEREAS, the Board notes that the subject application did not receive an objection with regards to the rear yard and, therefore, the Board has made no findings or granted any waivers with regards to the rear yard regulations applicable at the subject site; and

WHEREAS, in addition, the Board notes that the DOB shall determine whether the greenhouse proposed within the proposed 20 foot rear yard is permitted at the subject site as-of-right; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622; and

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2X zoning district and the Special Ocean Parkway District, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio and perimeter wall height contrary to ZR §§ 23-142 and 23-631(b); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "October 11, 2018"—Fifteen (15) sheets; and *on further condition*:

MINUTES

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.28 (5,108 square feet of floor area), a perimeter wall height of 24 feet, as illustrated on BSA-approved plans;**2018-49-BZ**

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT DOB shall determine whether the greenhouse indicated on the BSA-approved plans is a permitted obstruction in the rear yard;

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

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

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

Adopted by the Board of Standards and Appeals, October 11, 2018.

***The resolution has been amended to correct part of the conditions which read a maximum floor area ratio of 1.28 (4,080 square feet of floor area)... Now reads: a maximum floor area ratio of 1.28 (5,108 square feet of floor area)... Corrected in Bulletin Nos. 1-3, Vol. 104, dated January 18, 2019.**

BULLETIN

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DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|------------------------------|----|
| DOCKET | 31 |
| CALENDAR of February 5, 2019 | |
| Morning | 32 |
| Afternoon | 33 |

CONTENTS

MINUTES of Regular Meetings, Tuesday, January 15, 2019

Morning Calendar34

Affecting Calendar Numbers:

| | |
|---------------------------------|--|
| 159-07-BZ | 2402 86 th Street, Brooklyn |
| 245-15-BZ | 350 West 50 th Street, Manhattan |
| 866-49-BZ | 200-01 47 th Avenue, Queens |
| 30-58-BZ | 184-17 Horace Harding Expressway, Queens |
| 645-59-BZ | 10824 Flatlands Avenue, Brooklyn |
| 58-99-BZ | 18-10 Utopia Parkway, Queens |
| 93-08-BZ | 113-16 Astoria Boulevard, Queens |
| 2016-4141-BZ | 27 Barclay Street, Manhattan |
| 2016-4142-A thru 2016-4146-A | 70/72/74/76/78 Cunard Avenue, Staten Island |
| 2016-4473-A | 72-74 East 3 rd Street, Manhattan |
| 2017-248-A | Long Island Expressway and 74 th Street, Queens |
| 2017-318-A | 155 Johnson Street, Staten Island |
| 2016-4128-BZ | 511 Canal Street, Manhattan |
| 2016-4238-BZ | 388 Broadway, Manhattan |
| 2017-43-BZ | 140 Hendricks Avenue, Staten Island |
| 2017-277-BZ | 1022 East 23 rd Street, Brooklyn |
| 2017-315-BZ | 2030 Eastchester Road, Bronx |
| 2018-7-BZ | 291 Avenue W, Brooklyn |
| 2018-119-BZ | 8701 4 th Avenue, Brooklyn |
| 2018-132-BZ | 100 Church Street, Manhattan |
| 2017-268-BZ | 33-73 154 th Street, Queens |
| 2017-309-BZ | 406 Remsen Avenue, Brooklyn |
| 2018-10-BZ | 1238 East 26 th Street, Brooklyn |
| 2018-20-BZ | 2801 Avenue M, Brooklyn |

Afternoon Calendar58

Affecting Calendar Numbers:

| | |
|-------------|--|
| 2017-98-BZ | 21 West End Avenue, Manhattan |
| 2017-34-BZ | 311 Adams Avenue, Staten Island |
| 2017-270-BZ | 1434 Utica Avenue, Brooklyn |
| 2018-21-BZ | 1773 East 22 nd Street, Brooklyn |
| 2018-33-BZ | 31-41 97 th Street, Queens |
| 2018-39-BZ | 1249 East 23 rd Street, Brooklyn |
| 2018-98-BZ | 160-10 Cross Bay Boulevard, Queens |
| 2018-104-BZ | 1234-1238 East 22 nd Street, Brooklyn |

Correction62

Affecting Calendar Numbers:

| | |
|-----------|------------------------|
| 549-67-BZ | 5 Elm Tree Lane, Bronx |
|-----------|------------------------|

DOCKETS

New Case Filed Up to January 15, 2019

2019-6-BZ

138 East 39th Street, Block 00894, Lot(s) 0060, Borough of **Manhattan, Community Board: 6**. Variance (§72-21) to permit the enlargement of an existing house of worship (Eastern Prelacy of the Armenian Apostolic Church) contrary to ZR §24-11 (lot coverage and floor area ratio); ZR §§24-33 & 24-36 (permitted rear yard obstruction within a 30' required yard). R8 zoning district. R8B district.

2019-7-BZ

3341 Country Club Road, Block 05409, Lot(s) 470, Borough of **Bronx, Community Board: 10**. Special Permit (§73-121) to permit a proposed educational training facility (Fordham University Sailing and Rowing Team) contrary to ZR §22-10. R2 zoning district. R2 district.

2019-8-BZ

3000 Jerome Avenue, Block 3321, Lot(s) 0009, Borough of **Bronx, Community Board: 7**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) on a portion of the first and the entire second floor of an existing building contrary to ZR §32-10. C8-2 zoning district. C8-2 district.

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

CALENDAR

**REGULAR MEETING
FEBRUARY 5, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 5, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

244-97-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Parkwood Realty Associates, LLC, owner; Crunch 83rd Street LLC, lessee.

SUBJECT – Application October 18, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (Crunch Fitness) which expires on November 4, 2018; Extension of Time to Obtain a Certificate of Occupancy which expired on September 25, 2008; Waiver of the Board’s Rules. C2-5/R8B zoning district.

PREMISES AFFECTED – 158/62 West 83rd Street, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

156-03-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application November 8, 2018 – Extension of Time to commence construction of a previously granted Variance § (72-21) for the construction of a 16-story mixed-use commercial/community facility/ residential building contrary to the bulk regulations which expires on October 21, 2019. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

127-15-BZ

APPLICANT – Goldman Harris LLC, for Xin Development Group International, Inc., owner.

SUBJECT – Application November 8, 2018 – Extension of Time to commence construction of a previously approved Special Permit (§73-66) permitting construction of building more than the height limits established pursuant Z.R. §§61-211 & 61-22 which expires on October 27, 2019. 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, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

61-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 21, 2018 – Extension of Term of a previously approve Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (New York Sports Club) located on the second and third floors of a three-story commercial building, which expired on June 1, 2018; Waiver of the Board’s Rules. C4-2A zoning district and Special Bay Ridge District.

PREMISES AFFECTED – 439 86th Street, Block 6035, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #10BK

89-10-BZ

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

SUBJECT – Application February 5, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b) which expired on November 23, 2018. M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

**REGULAR MEETING
FEBRUARY 5, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 5, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

proposed building contrary to ZR §32-10. C6-4 Special Hudson Yards District.
PREMISES AFFECTED – 550 West 41st Street, Block 1069, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M

Carlo Costanza, Executive Director

ZONING CALENDAR

2017-231-BZ

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

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

2018-103-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jacqueline Mosseri and Alan Mosseri, owners.

SUBJECT – Application Jun2 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to ZR §23-47 (less than the required rear yard). R5 (Special Ocean Parkway) and R5 (Special Ocean Parkway Sub-district).

PREMISES AFFECTED – 936 Avenue R, Block 6685, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-106-BZ

APPLICANT – Eric Palatnik, P.C., for Tatiana Markel, owner.

SUBJECT – Application July 3, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family residence to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 124 Hastings Street, Block 8750, Lot 336, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-120-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Silverstein MB LLC, owner; Silverstein MB LLC, lessee.

SUBJECT – Application July 19, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (550 West 41st Gym) to be located within a

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 15, 2019
10:00 A.M.**

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

Absent: Commissioner Ottley-Brown.

SPECIAL ORDER CALENDARS

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for AYRES Associates and MG Stillwell 86th LLC, owner; Dolphin Fitness Club, lessee.

SUBJECT – Application September 28, 2018 – Extension of Time to Obtain a final Certificate of Occupancy a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (*Dolphin Fitness Club*) which expired on October 28, 2015; Waiver of the Board’s Rules. C8-2 zoning district.

PREMISES AFFECTED – 2402 86th Street, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening, an amendment of a previously granted special permit for a physical culture establishment (“PCE”), and an extension of time to obtain a certificate of occupancy, which expired on October 28, 2015; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the south side of 86th Street, bound by 24th Avenue and Bay 37th Street, in a C8-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 193 feet of frontage along 86th Street, 100 feet of frontage along each of 24th Avenue and Bay 37th Street, 19,333 square feet of lot area and is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 27, 2007, when, under the

subject calendar number, the Board granted a special permit to legalize the operation of a PCE on the second floor of an existing two- (2) story commercial building on condition that all work substantially conform to plans filed with the application; the term of the grant expire on January 1, 2012; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained within six (6) months of the grant, by May 27, 2008; Local Law 58/87 compliance be as reviewed and approved by the Department of Buildings (“DOB”); fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board reopened and amended the November 27, 2007, resolution to grant a one- (1) year extension of time to complete construction and obtain a certificate of occupancy, to expire December 9, 2009, on condition that all conditions from the prior resolution not specifically waived by the Board remain in effect; and, the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on October 28, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the November 27, 2007 resolution¹, as amended through December 9, 2008, to permit modifications to the layout of the PCE, to grant an extension of term of the special permit for a term of ten (10) years, to expire on January 1, 2022, and to grant an extension of time to obtain a certificate of occupancy for one (1) year from the date of the resolution, by October 28, 2015, on condition that any and all work substantially conform to plans as they apply to the objection filed with the application the grant be limited to a term of ten (10) years, to expire on January 1, 2022; any massages be performed only by New York State licensed massage professionals; there be no change in ownership or operating control of the PCE without prior approval from the Board; the hours of operation be limited to Monday through Thursday, from 5:30 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by October

¹ The October 28, 2014 resolution erroneously refers to a prior Board grant on February 5, 2008.

MINUTES

28, 2015; all DOB and Fire Department violations related to the PCE be removed by October 28, 2015; all conditions from the prior resolution not specifically waived by the Board remain in effect; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a delay in obtaining a certificate of occupancy was due to the installation of a fire alarm system, which is now signed-off; and

WHEREAS, the applicant further represents that a certificate of occupancy can be obtained within two (2) years; and

WHEREAS, by letter dated December 29, 2018, the Fire Department stated no objection to the application and confirmed that the Fire Department has issued two (2) violation orders (E457492 and E529594) for operating without a certificate of operation and to restore the fire alarm system in the PCE space; and the Bureau of Fire Prevention's Licensed Public Place of Assembly unit will perform continued inspections for compliance with these violation orders; and

WHEREAS, at hearing, the Board's Fire Department representative confirmed that the fire alarm system at the site was signed off by the Fire Department and that the violation orders were issued for failure to properly maintain that system, but that such orders need not postpone the Board's decision on this application; and

WHEREAS, at the hearing, the applicant additionally requested an amendment to reflect the exclusion of massage services from the PCE;

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy and amendment are appropriate with certain conditions, as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(d)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 27, 2007, as amended through October 28, 2014, so that as amended this portion of the resolution reads: "to grant an extension of time to obtain a certificate of occupancy to January 15, 2021; *on condition*:

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

THAT the hours of operation shall be limited to Monday through Thursday, from 5:30 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00

a.m. to 8:00 p.m.;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 159-07-BZ"), shall be obtained by January 15, 2021;

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

245-15-BZ

APPLICANT – Eric Palatnik, P.C., for New York Communications Center Assoc., LP c/o SL Green Realty Corp., owner.

SUBJECT – Application September 27, 2018 – Extension of Time to Obtain a final Certificate of Occupancy a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (TMPL Gym) which expired on November 1, 2017; Waiver of the Board's Rules. C6-4 Special Clinton District.

PREMISES AFFECTED – 350 West 50th Street, Block 1040, Lot(s) 1002, 1003, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, reopening and an extension of time to obtain a certificate of occupancy for a physical culture establishment, which expired on November 1, 2017; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the east side of Ninth Avenue, bound by West 50th Street and West 49th Street, in a C6-4 zoning district and in the Special Clinton District, in Manhattan; and

MINUTES

WHEREAS, the site has approximately 327 feet of frontage on West 50th Street, 201 feet of frontage on Ninth Avenue, 327 feet of frontage on West 49th Street, 67,696 square feet of lot area and is occupied by several buildings, including a 39 story plus sub-cellars mixed-use residential and commercial building in which the subject physical culture establishment is located; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 1989, when, under BSA Cal. No. 421-88-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit a physical culture establishment (“PCE”) on the sub-cellar levels two (2) and three (3) of a new mixed-use building on condition that all work substantially conform to plans, as they relate to objections, filed with the application; the special permit be limited to a term of ten (10) years, to expire on January 10, 1999; the hours of operation be limited to 6:00 a.m. to 10:00 p.m. Monday through Friday, and 8:00 a.m. to 9:00 p.m. Saturday and Sunday; there be no change in the ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by January 10, 1993; and

WHEREAS, on April 16, 2013, under BSA Cal. No. 314-12-BZ, the Board granted a new special permit, pursuant to ZR §§ 73-36 and 73-03, to permit the continued operation of a PCE, operated as Bally’s Total Fitness, on the ground floor and sub-cellars two (2) and three (3) of the existing building on condition that all work substantially conform to plans filed with the application; the term of the grant expire April 16, 2023; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures will be installed and/or maintained as shown on the Board-approved plans; substantial construction be completed within four (4) years, by April 16, 2017; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on November 1, 2016, under the subject calendar number, the Board granted a new special permit, pursuant to ZR §§ 73-36 and 73-03, to legalize the operation of a PCE, operated as TMPL Gym, on the ground floor and sub-cellars two (2) and three (3) of the existing building on condition that all work substantially conform to plans filed

with the application; the term of the grant be for ten (10) years, expiring March 23, 2026; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exits, local audible and visual alarms, and connection to an FDNY-central station—be installed in the entire PCE space; the PCE be fully sprinklered; minimum 3’-0” wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, including from any gymnasium equipment; accessibility compliance under Local Law 58/87 be as reviewed and approved by DOB; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by November 1, 2017; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, by letter dated July 26, 2018, the Board permitted a change in ownership and operating control of the PCE from “99th Avenue Holdings LLC d/b/a TMPL Gym” to “TSI Hell’s Kitchen, LLC d/b/a TMPL Fitness,” as substantially complying with the prior grant; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a change in ownership of the PCE, as well as some minor repairs that are being completed, caused unexpected delays in obtaining the certificate of occupancy; and

WHEREAS, the applicant further represents that a certificate of occupancy can be obtained within two (2) years of the Board’s grant; and

WHEREAS, by letter dated December 29, 2018, the Fire Department stated no objection to the application and confirmed that the Fire Department has issued three (3) violation orders (E562057, E511029 and E511030) for operating without a certificate of operation, to restore the fire alarm system and provide a letter of approval for the fire alarm system in the PCE space; and the Bureau of Fire Prevention’s Licensed Public Place of Assembly unit will perform continued inspections for compliance with these violation orders; and

WHEREAS, at hearing, the Board’s Fire Department representative confirmed that the Fire Department will continue to perform inspections in an effort to ensure that all outstanding violations regarding the fire alarm system are

MINUTES

cured, thus, the Board need not delay a decision on this application; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(d)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 1, 2016, so that, as amended, this portion of the resolution reads: “to grant an extension of time to obtain a certificate of occupancy to January 15, 2021; *on condition*:

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

THAT fire safety measures—including a sprinkler system and an interior fire alarm system—shall be maintained as indicated on the BSA-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 245-15-BZ”), shall be obtained by January 15, 2021;

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

866-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for 2912 Realty, LLC, owner; A & AM Diagnostic Service Centers, Inc., lessee.

SUBJECT – Application July 19, 2016 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 200-01 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for adjourned hearing.

645-59-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Board’s Rules. C2-3/R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

58-99-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory automotive repair which expires on October 26, 2019. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 18-10 Utopia Parkway, Block 5743, Lot 75, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for LGA Hospitality LLC, owner.

SUBJECT – Application September 14, 2018 – Extension of Time to Complete Construction of a Variance (§72-21) permitting the construction of a six-story transient hotel (UG 5) which expired on June 4, 2017; Waiver of the Board’s Rules.

PREMISES AFFECTED – 113-16 Astoria Boulevard, Block 1706, Lot 11, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to January 29,

MINUTES

2019, at 10 A.M., for continued hearing.

2016-4141-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 30 Park Place Hotel LLC, owner; Four Seasons Hotel New York Downtown, lessee.

SUBJECT – Application July 27, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Four Seasons Hotel New York Downtown) on a portion of the first and third floors of a mixed-use hotel and residential building. The amendment seeks to permit the expansion of the use include an existing accessory fitness center, dance studio and pool on the third-floor level for a total of 18,980 square feet. C5-3 (LM) zoning district.

PREMISES AFFECTED – 27 Barclay Street, Block 123, Lot(s) 1101-1260, 3, 18, Borough of Manhattan.

COMMUNITY BOARD # 1M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for postponed hearing.

APPEALS CALENDAR

2016-4142-A thru 2016-4146-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cunard/SI Associates LLC, owners.

SUBJECT – Application March 17, 2016 – To permit the proposed development consisting of five one family homes contrary Article 3 Section 36 of the General City Law. R3A (HS) zoning district.

PREMISES AFFECTED – 70/72/74/76/78 Cunard Avenue, Block 623, Lot(s) 10, 9, 8, 95, 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn with prejudice.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Sheta and Commissioner Scibetta.....3

Negative: Vice-Chair Chanda.....1

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decisions of the Deputy Borough Commissioner, dated February 19, 2016, acting on Department of Buildings (“DOB”) Application Nos. 520264945, 520264954, 520264963, 520264981 and 520264972 read in pertinent part:

GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of 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 502.1 of the 2014 NYC Building Code; and

WHEREAS, these are applications to permit the construction of a two-story plus cellar one-family dwellings on each of five proposed tax and zoning lots with frontage on a portion of Cunard Avenue that is not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on these applications on September 27, 2018, after due notice in *The City Record*, with a continued hearing on December 11, 2018, and then to decision on January 15, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and the surrounding area; and

WHEREAS, the subject site is an irregularly shaped lot with non-continuous frontage on Wandel Avenue to the north and Cunard Avenue to the west and south, partially within an R3A zoning district and partially within an R3-1 zoning district, in the Special Hillside Preservation District, on Staten Island; and

WHEREAS, the site has approximately 75 feet of frontage along Wandel Avenue, 80 feet of frontage along Cunard Avenue to the east, 332 feet of frontage along Cunard Avenue to the south, 52,144 square feet of lot area and is currently vacant; and

WHEREAS, the applicant provided an Application for Mergers or Apportionments submitted to the New York City Department of Finance, and approved as of May 6, 2015, for the apportionment of existing tax lot 8 into five (5) separate tax lots: tax lot 93 (78 Cunard Avenue, 3,501 square feet of lot area), tax lot 95 (76 Cunard Avenue, 4,576 square feet of lot area), tax lot 8 (74 Cunard Avenue, 14,415 square feet of lot area), tax lot 9 (72 Cunard Avenue, 16,706 square feet of lot area), and tax lot 10 (70 Cunard Avenue, 12,946 square feet of lot area); and

WHEREAS, the applicant proposes to develop each of the five new tax and zoning lots with a two-story plus cellar one-family dwelling and asserts that each of the buildings would comply and conform to all applicable zoning requirements; and

WHEREAS, Cunard is an unmapped street, but is improved and open to the public from the intersection of Wandel Avenue to a point approximately 270 feet south—such portion having been issued a Corporation Counsel Opinion on September 12, 2003, for an as-of-use width of 25-30 feet; however, beyond such point, Cunard Avenue is unimproved; and

WHEREAS, the applicant initially proposed to pave and improve 120 feet of the currently unimproved portion of Cunard Avenue (in front of proposed tax lots 93, 95, 8 and 9) that does not connect to the already improved and in-use portion of Cunard Avenue that leads, ultimately, to Wandel Avenue, but, instead, utilizes existing tax lot 237 on block 623 as a 30 foot wide road (an “access lane”) providing access to Cedar Terrace, another unmapped street issued a Corporation

MINUTES

Counsel Opinion as-in-use for a width of 20-30 feet, but having an actual width at the proposed access lane of 20 feet; and

WHEREAS, the applicant subsequently revised the plans to indicate a 50-foot-wide access lane comprising the entirety of tax lot 237; and

WHEREAS, the applicant submits that the access from Cedar Terrace was proposed at the request of the Fire Department as an alternative to access from Wandel Avenue, which is very steeply sloped at the subject location; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of these applications, citing concerns that the proposal should be subject to review by the City Planning Commission (“CPC”) for compliance with Special Hillside Preservation District regulations and that the access lane proposed to connect Cedar Terrace and Cunard Avenue associated with these applications would create practical difficulties for delivery of services; and

WHEREAS, by letter dated May 13, 2016, New York City Councilmember Debi Rose states opposition to these applications, echoing the concerns identified by Community Board 1, Staten Island; and

WHEREAS, by letter dated June 16, 2016, Staten Island Borough President James S. Oddo also recommends disapproval of these applications unless a complying accessible path—compliant, that is, with street drainage, street, and sidewalk and curb improvements, Americans with Disabilities Act (ADA) design standards and all code-related rules pertaining to fire operations features, including fire apparatus access, dead-end proposals, building access, hydrant and water supplies and utility access—from the nearest mapped street be open to public use without hindrance and remain unobstructed at all times; and

WHEREAS, Borough President Oddo expressed concerns regarding the location of the site in the Special Hillside Preservation District, the lack of access to the portion of Cunard Avenue proposed to be opened in association with these applications and the proposal to construct a new private road connecting Cedar Terrace and an unopened portion of Cunard Avenue on a separate zoning lot; and

WHEREAS, accordingly, Borough President Oddo requested that the Board require access to Cunard Avenue from the existing opened portion of that street and that the applicant pursue a mapping action at CPC for the proposed connector road to protect the integrity of the City Map and better protect adjoining property owners’ quality of life; and

WHEREAS, the Board was also in receipt of two (2) letters, including one from the Van Duzer Street Civic Association, in opposition to this application, as well as 29 petitions, signed by residents of the immediate area, stating that the subject applications will negatively impact the neighborhood and urging the Board to deny the applications based on the absence of a proposal to connect the new proposed section of Cunard Avenue to the existing improved portion of Cunard Avenue; the steepness and narrowness of Cunard Avenue at the subject location; failure of the proposed

egress to Cedar Terrace—having a width of between 25 and 28 feet—to meet Fire Code; that the proposal will overburden the neighborhood’s antiquated combined sewer systems; and that CPC has not yet acted on applications required under applicable Special Hillside Preservation District regulations; and

WHEREAS, by letter dated December 7, 2018, the Staten Island Office of the New York City Department of City Planning (“DCP”) states that on April 16, 2015, the subject applicant team met with DCP in an interdivisional meeting to discuss a proposal seeking Special Hillside Preservation District (“SHPD”) authorizations to develop five single-family homes accessed via a private road on a zoning lot (Block 623, Lot 237) located between Cedar Terrace and Cunard Avenue and that DCP has significant concerns regarding access to the proposed homes because the subject site is irregularly shaped and contains a substantial amount of steep slope; DCP noted that the applicant team should explore potential development options that minimized disturbance to the steep slope, as per the goals of the SHPD; DCP also identified concerns regarding the ability to provide adequate circulation and turnaround for emergency vehicles and the effect of the proposal to provide access by chaining together a series of unmapped roads that would result in a volume of traffic on Cedar Terrace, an existing private road, that was never contemplated; and

WHEREAS, DCP further states in their letter that alternative access that would involve extending Cunard Avenue raises additional issues: Cunard Avenue is not a final mapped street, does not have a Corporation Counsel Opinion and does not meet the zoning definition of a “street”; the lower portion of Cunard Avenue is only partially improved to approximately 23 feet wide and is in an ecologically sensitive steep slope area; the western and northern portions of Cunard Avenue are not open or improved at all, including a portion that fronts proposed residences; and the grading of Cunard does not allow for the safe passage of emergency vehicles; therefore, DCP suggests that the applicant team explore alternative development scenarios focused on where the site has existing frontage along improved streets, including Wandel Avenue, which is a final mapped street; and

WHEREAS, DCP concludes that the requested waivers would not be appropriate at this time, but that, to the extent that the applicant amends the proposal to locate development along existing streets, the agency would reexamine its position; and

WHEREAS, by letter dated December 26, 2018, subsequent to the closing of the public hearing on this application on December 11, 2018, the applicant requested withdrawal of these applications without prejudice; and

WHEREAS, pursuant to § 1-12.2 of the Board’s Rules of Practice and Procedure:

The Board may consider a request to withdraw an application made by an applicant at any time before the Board’s final determination.

If the request to withdraw is made before the hearing has been closed, the Board may permit

MINUTES

withdrawal without prejudice upon request.

If the request to withdraw is made after the hearing is closed, the Board may permit withdrawal without prejudice for good cause only. If it determines that proper enforcement or public policy would thereby be served, the Board may refuse the withdrawal or it may condition the withdrawal with prejudice on the refiling of a future application for the same relief.

If the request to withdraw the application is made, and a motion to vote is pending, such motion will have precedence; and

WHEREAS, in light of the letter from DCP in strong opposition to the particular access route herein proposed as part of these applications, as well as the recommendations of Community Board 1, Staten Island, and the Staten Island Borough President, the Chair moved to permit the withdrawal of these applications with prejudice as to the future filing of a series of applications proposing the same development and means of access to 20 foot wide Cedar Terrace and requesting the same relief; and

WHEREAS, such motion received three votes in favor and one vote, by the Vice-Chair who believed that the subject applications should be withdrawn without prejudice, against the motion.

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application *with prejudice* to filing another series of applications identical to the subject series of applications, proposing the same residential development with access provided to 20-foot-wide Cedar Terrace and requesting the same relief.

Adopted by the Board of Standards and Appeals, January 15, 2019.

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – Application filed pursuant to §310 of the Multiple Dwelling Law ("MDL") requesting to vary §211 of the MDL to allow for the partial one story vertical enlargement of an existing tenement building. R8B zoning district.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for decision, hearing closed.

2017-248-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district.

PREMISES AFFECTED – Long Island Expressway and 74th Street, Block 2814, Lot 4, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for adjourned hearing.

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4128-BZ

CEQR #16-BSA-084M

APPLICANT – Herrick, Feinstein, LLP, for Ponte Equities, owner; Dogpound Fitness LLC, lessee.

SUBJECT – Application February 29, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Dogpound Fitness*) to be located at the ground-floor level of an existing commercial building. C6-2A zoning district.

PREMISES AFFECTED – 511 Canal Street, Block 594, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated September 16, 2016, acting on Department of Buildings ("DOB") Application No. 122652959, reads in pertinent part:

MINUTES

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, a physical culture establishment (“PCE”) in a portion of the first floor of an existing six- (6) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, and then to decision on January 15, 2019; and

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

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the northwest corner of Canal Street and Renwick Street, in a C6-2A zoning district, in Manhattan; and

WHEREAS, the site has approximately 109 feet of frontage on Canal Street, 102 feet of frontage on Renwick Street, 6,074 square feet of lot area and is occupied by an existing six- (6) story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be

provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 3,256 square feet of floor area on the first floor with areas for strength training, open workout areas, a boxing ring, an area for lockers, bathrooms, showers, an office, and reception area; and

WHEREAS, the PCE has operated since March 3, 2016 as “Dogpound Fitness,” with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, although the building has no residential uses within, the applicant states that sound and vibration

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

attenuation measures have been provided in the PCE space to mitigate any potential disturbance to the building's commercial tenants; specifically, the PCE is utilizing shock absorbing and sound dampening acoustically rated rubber tile flooring in the workout areas of the PCE and acoustically insulated drop ceilings in the reception area and bathrooms to reinforce acoustic performance; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in an existing commercial building and the PCE complements the mixed-use neighborhood where it is located; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement, body building and weight reduction; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE is located in a busy, mixed-use area with residential and commercial uses, and the applicant anticipates low noise levels within the PCE and no exterior noise emanating from the PCE; and

WHEREAS, the applicant states that wet sprinkler system and an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—will be installed throughout the PCE space; and

WHEREAS, by letter dated November 28, 2018, the Fire Department objected to the application, stating that the building does not require a sprinkler and standpipe system under the 1968 Building Code; the premises had a fire alarm system that was damaged due to [Superstorm] Sandy and subsequently was removed without filing for the removal or replacement; the Fire Alarm Inspection Unit ("FAIU") at the Bureau of Fire Prevention has been notified and inspectors will be visiting the site; in addition, the fire alarm system installed by the proposed PCE, as described in the "statement of facts," has not been reviewed nor inspected by FAIU; inspectors will visit the PCE space to determine the type of system and issue applicable violations; copies of these violations will be given to the Board once issued; as per the plans filed and the Alteration (Alt. I 122652959) the occupant load is 65 persons, therefore a Place of Assembly (PA) application is not required; and, the Fire Department requested an adjournment of the application so that the

FAIU inspectors can visit the site and determine the type of fire alarm installed at the PCE space and to verify that the building's fire alarm system was removed; and

WHEREAS, by letter dated December 20, 2018, the Fire Department stated no objection to the application and confirmed that, on December 13, 2018, the FAIU conducted an inspection of the PCE space and the entire premises to verify the type of fire alarm system at the premises and confirmed that the system was removed; in accordance with the rules and regulations of the Fire Department, two (2) violation orders were subsequently issued; a review of the DOB Building Information System shows that two (2) applications have been filed for installation of a fire alarm system in the premises (Alt. II 123594538 for the PCE space; Alt. II 123594547 for the building); and, the Fire Department will conduct periodic inspections and confirm the progress of the fire alarm installation within the Bureau of Fire Prevention; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-084M, dated February 29, 2016; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing six- (6) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 17, 2018-Nine (9) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 3, 2026;

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

THAT accessibility compliance under Local Law

MINUTES

58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2016-4128-BZ”), shall be obtained within one (1) year, by January 15, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2016-4238-BZ

CEQR #17-BSA-009M

APPLICANT – Qiang Su Ra, for 388 Broadway Owners LLC, owner; Eden Day Spa, lessee.

SUBJECT – Application August 10, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Eden Day Spa*) within an existing building. C6-2A zoning district within the Tribeca East Historic District.

PREMISES AFFECTED – 388 Broadway, Block 195, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated July 28, 2016, acting on Department of Buildings (“DOB”) Application No. 122479932, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C6-2A zoning district and in the Tribeca East Historic District, a physical culture establishment (“PCE”) on portions of the sub-cellar,

cellar and first floor of an existing five- (5) story plus cellar and sub-cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, and then to decision on January 15, 2019; and

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

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the east side of Broadway, between Walker Street and White Street, in a C6-2A zoning district and in the Tribeca East Historic District, in Manhattan; and

WHEREAS, the site has approximately 28 feet of frontage, 175 feet of depth, 4,900 square feet of lot area and is occupied by an existing five- (5) story plus cellar and sub-cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 14, 2004, when, under BSA Cal. No. 214-03-BZ, the Board granted a special permit, pursuant to ZR §§ 73-36 and 73-03 to permit the legalization of a PCE on the first floor of an existing five-story commercial building, then located in an M1-5 zoning district, on condition that all work substantially conform to plans as they apply to the objections filed with the application; the special permit be limited to a term of ten (10) years from July 8, 2003, expiring July 8, 2013; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed only by New York State licensed massage therapists; the above conditions appear on the Certificate of Occupancy; an interior fire alarm system be installed and maintained, including area smoke detectors throughout the premises, manual pull stations at each required exit, local audible and visual alarms, and connection of the such system and existing sprinkler system to a NYC Fire Department-approved central station, as shown on the BSA-approved plans; the DOB ensure compliance with all exiting requirements and Local Law 58/87; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the Landmarks Preservation Commission, on October 15, 2018, under LPC-19-31659, issued a Certificate of No Effect (CNE-19-31659) to permit interior alterations at the sub-cellar, cellar and first floor, including

MINUTES

demolition and construction of nonbearing partitions and finishes, as well as plumbing and electrical work, and determined that the work will have no effect on the significant protected features of the building; and

WHEREAS, pursuant to § 1-07.3(b)(3)(iv) of the Board's Rules of Practice and Procedure, because the term of the special permit has lapsed more than two (2) years but less than ten (10) years after the expiration of the term, applications for post-1961 special permits where the grant is limited to term as specified in the Zoning Resolution must be filed as a new special permit; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, the Board notes that, because no portion of the subject PCE is represented as being located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a

background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 4,310 square feet of floor space in the sub-cellar with storage areas, laundry, and mechanical space; 5,567 square feet of floor space in the cellar with treatment rooms, massage rooms, a rest area, a manicure and pedicure area, a water station, a bathroom, and utilities room; and, 4,900 on the first floor with treatment rooms, a consultation room, massage rooms, a sauna, bathrooms, showers, a reception area and a pantry with microwave and stove; and

WHEREAS, the applicant submits that the PCE operates as "Eden Day Spa," operating daily from 10:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because a majority of patrons will be local area residences and area employees; and

WHEREAS, the Board notes that the subject PCE continued to operate after the expiration of the prior special permit on July 8, 2013, and that no complaints regarding its operation during that time have been submitted into the record on this application; and

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

WHEREAS, the applicant represents that the PCE will contain facilities for the practice of massage; and

WHEREAS, accordingly, the Board finds that the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant submits that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will be installed within the PCE space which is already protected by a wet sprinkler system; and

WHEREAS, by letter dated December 1, 2018, the Fire Department confirms that applications have been filed with the DOB for the fire alarm system and sprinkler system and will be inspected by units in the Bureau of Fire Protection; and, the Fire Department stated that it has no objection to the application; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates the PCE will serve the local community and provide a benefit; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, at the hearing, the Board expressed concern regarding access to the PCE by individuals requiring assistance; and

WHEREAS, in response, the applicant submitted photographs to demonstrate the installation of a sign and wireless doorbell, and availability of a portable ramp, to aid individuals requiring assistance; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-009M, dated August 10, 2016; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space in the sub-cellar, cellar level, and first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C6-2A zoning district and in the Tribeca East Historic District, a physical culture establishment in portions of the sub-cellar, cellar level, and first floor of an existing five- (5) story plus

sub-cellar and cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 10, 2019”—Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on January 15, 2029;

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

THAT all services provided by the PCE to which New York State licensure is required shall be performed by individuals licensed to perform such service;

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

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

THAT an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection to an FDNY-approved central station—shall be installed and maintained within the PCE space;

THAT minimum 3-foot-wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2017-293-BZ”) shall be obtained within one (1) year, by January 15, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2017-43-BZ
CEQR #17-BSA-088R

APPLICANT –Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application February 10, 2017 – Variance (§72-21) to permit the construction of a single family, detached home contrary to ZR §23-461c (Side Yard and Open Area). R3A (Special Hillside Preservation District (SHPD) Lower Density Growth Management Area (LDGMA) zoning district.

PREMISES AFFECTED – 140 Hendricks Avenue, Block 44, Lot 19, Borough of Staten Island.

MINUTES

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 18, 2017, acting on DOB Application No. 520286850 reads in pertinent part:

1. ZR 23-461(C): The proposed side yard and open area requirements are not provided and contrary to ZR 23-461(C) in that the proposed side yard is less than eight (8) feet required between buildings containing residences; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3A zoning district and in the Special Hillside Preservation District and Lower Density Growth Management Area, the construction of a single-family residence that does not comply with side yard and open area regulations, contrary to ZR § 23-461(c); and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the south side of Hendricks Avenue, between Jersey Street and Bismark Avenue, in an R3A zoning district and in the Special Hillside Preservation District and Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 25 feet of frontage, 100 feet of depth, 2,500 square feet of lot area and is vacant; and

WHEREAS, the applicant submits that the site was previously occupied by a residential building that was demolished pursuant to permits in 1987; and

WHEREAS, the applicant proposes to construct a two-(2) story with cellar and one-(1) car garage single-family detached residence resulting in a residence with 15 feet of width and two (2) side yards, each measuring five (5) feet in width; and

WHEREAS, at the subject site, an open area with a minimum total width of eight (8) feet between buildings containing residences on adjacent zoning lots is required pursuant to ZR § 23-461(c)(1) and, pursuant to ZR § 23-461(c)(2), when the open area requirement of ZR § 23-461(c)(1) results in side yards totaling more than 13 feet, the width of such side yards may be reduced to not less than five

(5) feet so long as the total width of both side yards is at least 13 feet; and

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

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), that the history of the development of the site with a residential building, its vacancy, its interior location and its adjacency to buildings containing residences located in close proximity to their common side lot lines are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; specifically, the applicant states that absent the requested relief, a residence only 12 feet in width can be constructed at the site as-of-right, and such a narrow house is inconsistent with the surrounding area; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of vacant interior lots located within the subject R3A zoning district bound by Layton Avenue to the north, Corson Avenue to the south, Westervelt Street to the east and Jersey Street to the west (the “Uniqueness Study Area”) demonstrating that, of the 26 other vacant interior lots in the Uniqueness Study Area (not including the subject site), 4 vacant lots (or 15 percent) are similarly situated as the subject site, that is, they are interior lots, have a width of 25 feet or less, are not held in common ownership with an adjacent lot and, accordingly, can only be developed with a residential building having maximum width of 12 feet; and

WHEREAS, the applicant also provided a 1917 Sanborn map, showing the prior development of the site with a two-(2) story residential building and buildings containing residences to its immediate east and west in approximately the same location and orientation as those adjacent buildings are located today, suggesting that the side yards of the adjacent residential buildings are lawful non-compliances in that they pre-date the 1961 Zoning Resolution; and

WHEREAS, according to a site survey and plans provided by the applicant, the residence located immediately to the east of the subject site is situated approximately six (6) inches from the side lot line it shares with the subject site and the residence located immediately to the west of the subject site is situated approximately 0.2 feet from the side lot line it shares with the subject site; and

WHEREAS, in light of the foregoing, the Board finds that the history of the residential development of the site, its vacancy, interiority and adjacency to buildings containing residences located in close proximity to their common side lot lines create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

MINUTES

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood and, in support of that contention, submitted a study of the widths of single- or two-family residences located on 25 foot wide lots in the subject R3A zoning district bound by Scribner Avenue to the north, Layton Avenue to the south, Westervelt Avenue to the east and Jersey Street to the west (the "Neighborhood Study Area") demonstrating the presence of 94 such dwellings that range in width from 12 feet to 25 feet as follows: 28 percent (26 lots) have dwellings with a width of 21 feet; 22 percent (21 lots) have dwellings with a width of 22 feet; 15 percent (14 lots) have dwellings with a width of 16 feet; 9 percent (8 lots) have a width of 20 feet; 7 percent (7 lots) have a width of 23 feet; 4 percent (4 lots) have a width of 14 feet; 4 percent (4 lots) have a width of 18 feet; 3 percent (3 dwellings) have a width of 17 feet; 2 percent (2 lots) have a width of 12 feet; and 1 percent (1 lot each) have a width of 13.5 feet, 15 feet, 19 feet, 24 feet or 25 feet; and

WHEREAS, the applicant additionally submits that the redevelopment of the site with a residential occupancy as it was occupied from at least, 1917 to 1987, would be of benefit, rather than detriment, to the public welfare because the site is currently overgrown and unsightly and that it would not impair the development of adjacent properties because such properties are already developed with residential buildings and do not have any windows facing the subject site; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant submits, and the Board finds, that the subject proposal is the minimum necessary to afford the owner relief pursuant to ZR § 72-21(e); 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 II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-088R, dated February 10, 2017; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, within an R3A zoning district, the construction of a detached single family home that does not comply with side yards and open area, contrary to ZR § 23-461(c); *on condition* that all work shall substantially conform to drawings filed with this application marked

"Received March 30, 2018– Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: two (2) side yards, each five (5) feet in width, as reflected on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-43-BZ"), shall be obtained within four (4) years, by January 15, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2017-277-BZ

CEQR #17-BSA-040K

APPLICANT – Law Office of Lyra J. Altman, for Freddi Baranoff & Edward Baranoff, owners.

SUBJECT – Application October 12, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 1022 East 23rd Street, Block 7604, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 11, 2017, acting on Department of Buildings ("DOB") Application No. 321422769, reads in pertinent part:

List of objections:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the

MINUTES

proposed open space ratio is less than the minimum required;

3. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required; and

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

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on that same date; and

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

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue J and Avenue K, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage, 100 feet of depth, 5,000 square feet of lot area, and is occupied by a two (2) story plus attic and cellar single-family dwelling containing 3,511 square feet of floor area (0.70 FAR), an open space ratio of 1.00 (3,516 square feet of open space), a front yard with a depth of 19’-5.75”, a rear yard with a depth of 18’-10.5”, two (2) side yards with widths of 4’-11.5” and 14’-3.25”, and detached concrete block garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General

Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single-* or *two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building’s non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by vertically enlarging the dwelling and horizontally extending the two (2) stories and attic into the front yard and southern side yard, resulting in a two- (2) story plus attic and cellar dwelling with 5,019 square feet of floor area (1.00 FAR), an open space ratio of 0.6 (2,993 square feet of open space), a front yard with a depth of 15 feet, a rear yard with a depth of 18'-10.5", two (2) side yards with widths of 8'-10" and 5'-0", and a detached garage in the rear; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,484 square feet to 2,008 square feet, the second floor from 1,247 square feet to 2,101 square feet, and the attic from 780 square feet to 910 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.5 is required, and a rear yard with a depth of 30 feet is required pursuant to ZR §§ 23-141 and 23-47; and

WHEREAS, the proposed enlargement includes a vertical extension of the existing non-complying rear yard, and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying rear yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 93 qualifying residences, 87 residences (94 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.56, and 13 residences (14 percent) have an FAR of 1.00 or greater; and

WHEREAS, with regards to open space, the applicant demonstrated that, within the Study Area, 92 residences (99 percent) have an open space ratio less than 1.50, ranging from 1.46 to 0.36, and 15 residences (16 percent) have an open space ratio of 0.6 or less; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 34 other single- or two- (2) family dwellings for which dimensions were provided, 30 lots (88 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 0 feet to 27 feet, including the dwelling located immediately adjacent and to the south of the subject site, which has a rear yard depth of 0 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-040K, dated October 13, 2017; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "January 15, 2019"—Seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.00 (5,019 square feet of floor area), a minimum open space ratio of 0.6 (2,993 square feet of open space), and a rear yard with a minimum depth of 18'-10.5", as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-277-BZ") shall be obtained within four (4) years, by January 15, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

MINUTES

2017-315-BZ

APPLICANT – Eric Palatnik, P.C., for Thomas J. Cannistraci, owner; Strong Pelham Fitness, lessee.

SUBJECT – Application December 12, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Dolphin Fitness Club*) located on the first floor and mezzanine area of the subject building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 2030 Eastchester Road, Block 4218, Lot 9, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10:00 A.M. for decision, hearing closed.

2018-7-BZ

CEQR #18-BSA-086K

APPLICANT – Law Office of Lyra J. Altman, for Eli Halabi, owner.

SUBJECT – Application January 18, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 291 Avenue W, Block 7151, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 19, 2017, acting on Department of Buildings (“DOB”) Application No. 321464633, reads in pertinent part:

The proposed enlargement of the existing one family residence in an R4 zoning district:

1. creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-142 of the Zoning Resolution;
2. creates non-compliance with respect to the lot coverage and is contrary to Section 23-142 of the Zoning Resolution;
3. creates non-compliance with respect to the open space and is contrary to Section 23-142

of the Zoning Resolution;

4. creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution;
5. creates non-compliance with respect to the side yards and is contrary to Section 23-461 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the enlargement of a detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, open space, rear yards and side yards contrary to ZR §§ 23-142, 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with continued hearings on November 8, 2018, and January 15, 2019, and then to decision on same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, the Board was in receipt of one (1) form letter in opposition to this application; and

WHEREAS, the subject site is located on the north side of Avenue W, between Stryker Street and West 1st Street, in an R4 zoning district and in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site is an L-shaped lot, has approximately 38.5 feet of frontage along Avenue W, 21 feet of frontage along Stryker Street, 100 feet of depth, 4,263 square feet of lot area, and is occupied by a two (2) story plus cellar single-family dwelling containing 2,446 square feet of floor area (0.57 FAR), lot coverage of 32 percent, open space of 68 percent, a front yard with a depth of 5’-5.75”, a rear yard with a depth of 44’-7.5”, two (2) side yards with widths of 2’-8” and 3’-5”, a perimeter wall height of 22’-1” and a total building height of 28’-8”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the

foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes enlarge the building by vertically enlarging the dwelling in the front yard, vertically and horizontally extending the dwelling in the rear, and constructing a detached shed in the rear yard, resulting in a two- (2) story plus attic and cellar dwelling with 5,649 square feet of floor area (1.32 FAR), lot coverage of 54 percent, open space of 46 percent, a front yard with a depth of 5'-5.75", a rear yard with a depth of 20', two (2) side yards with widths of 2'-8" and 3'-5", a perimeter wall height of 23'-10" and a total building height of 34'-11"; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,379 square feet to 2,305 square feet, the second floor from 1,067 square feet to 2,078 square feet, create a new attic with 1,146 square feet of floor area, and construct a new 120 square foot detached shed in the rear; and

WHEREAS, at the subject site, a maximum FAR of 0.901 is permitted, a maximum lot coverage of 45 percent is permitted, a minimum open space of 55 percent is required, a front yard depth of ten (10) feet is required, a rear yard with a depth of 30 feet is required, and two (2) side yards, each with a minimum width of five (5) feet, and 13 feet of total side yards² are required pursuant to ZR §§ 23-142, 23-45, 23-47 and 23-48; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R4 zoning district (the "Study Area") concluding that, of the 94 qualifying residences, 65 residences (69 percent) have an FAR of greater than 0.75, including 36 residences (38 percent) with an FAR of greater

1 Pursuant to ZR § 23-142, a maximum FAR of 0.75 is permitted; however, pursuant to ZR § 23-142(a), FAR may be increased by up to 20 percent provided that any such increase in floor area is located directly under a sloping roof which rises at least three and one half inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five (5) and eight (8) feet.

2 Pursuant to ZR § 23-48, the required total width of side yards for a single-family detached residence may be reduced by four (4) inches for each foot by which the width of a zoning lot is less than that required under the provisions of § 23-32; however, the applicant provided no evidence to demonstrate that the subject zoning lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit, as required for the applicability of that section.

MINUTES

than 0.9, and 23 residences (25 percent) with an FAR of 1.32 or greater, ranging from 1.32 to 1.81; and

WHEREAS, with regards to lot coverage and open space, the applicant demonstrated that, within the Study Area, 32 residences (34 percent) have lot coverage greater than 45 percent, ranging from 48 percent to 66 percent, and 18 residences (19 percent) have lot coverage of 54 percent or greater; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 27 other single- or two- (2) family dwellings for which dimensions were provided, 13 lots (48 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 3 feet to 29 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding the proposed depth of the rear yard setback at the second floor in light of the adjacent property conditions; and

WHEREAS, in response to the Board's concerns, the applicant amended the plans to provide a 25-foot rear yard setback at the second floor; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-086K, dated January 19, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot coverage, open space, rear yards, and side yards contrary to ZR §§ 23-142, 23-47 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "January 15,

2019"—Nineteen (19) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.32 (5,649 square feet of floor area), a maximum lot coverage of 54 percent, a minimum open space of 46 percent, and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet at the second floor, two (2) side yards with minimum depths of 2'-8" and 3'-5", and a front yard with a minimum depth of 5'-5.75", as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-7-BZ") shall be obtained within four (4) years, by January 15, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2018-119-BZ

CEQR #19-BSA-13K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 8701 4th Avenue LLC, owner.

SUBJECT – Application July 17, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Dolphin Fitness) to be located on a portion of the first floor and the entirety of the second floor of a commercial building contrary to ZR §32-10. C4-2A Special Bay Ridge District.

PREMISES AFFECTED – 8701 4th Avenue, Block 6050, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated July 10, 2018, acting on Department

MINUTES

of Buildings (“DOB”) Application No. 321171307, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C4-2A zoning district per ZR Section 32-10 and therefore requires a ZR Section 73-36 special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-2A zoning district and in the Special Bay Ridge District, a physical culture establishment (“PCE”) in portions of the first and second floors of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the southeast corner of 4th Avenue and 87th Street, in a C4-2A zoning district and in the Special Bay Ridge District, in Brooklyn; and

WHEREAS, the site has approximately 121 feet of frontage on 4th Avenue, 122 feet of frontage on 87th Street, 10,920 square feet of lot area, and is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over tax lot 8 since February 5, 2008, when, under BSA Cal. No. 152-07-BZ, the Board issued a special permit to legalize the operation of a PCE on condition that all work substantially conform to plans filed with the application; the term of the grant expire on January 1, 2013; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; fire safety measures, including full sprinklering as per the Fire Department, be installed and/or maintained as shown on the BSA-approved plans; the above conditions appear on the certificate of occupancy; the PCE be brought into compliance with all conditions of this grant and the BSA-approved plans within six (6) months of the grant, by August 5, 2008; a new certificate of occupancy be obtained within one (1) year of the date of the grant, by February 5, 2009; Local Law 58/87 compliance be as reviewed and approved by DOB; the occupancy of the PCE be as reviewed and approved by DOB; DOB inspect and approve compliance with all conditions of this grant prior to the issuance of a certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted;

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

WHEREAS, on October 21, 2014, under BSA Cal. No. 152-07-BZ, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to grant an extension of term for ten (10) years, to expire January 1, 2023, and granted an extension of time to obtain a certificate of occupancy for one (1) year, to expire October 21, 2015, on condition that that any and all work substantially conform to plans filed with the application; any massages be performed only by New York State licensed massage professionals; there be no change in ownership or operating control of the PCE without prior approval from the Board; the hours of operation be limited to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.; the above conditions appear on the certificate of occupancy; all conditions from the prior resolution not

specifically waived by the Board remain in effect; and DOB ensure compliance with all

other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the prior term having expired, and the applicant having represented that the operator of the subject PCE is unaffiliated with the operator(s) to whom prior special permits were granted, the applicant seeks a new special permit under the subject calendar number; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE will occupy 315 square feet of floor area on the first floor with a dedicated entrance to the PCE with stair and elevator access to the second floor of the PCE; and 10,392 square feet of floor area on the second floor with exercise spaces for free weights, circuit training on exercise

equipment, cardio areas and functional training, a boxing ring, men's and women's locker rooms with restrooms and showers, a reception area, office space, and storage; and

WHEREAS, the PCE is proposed to operate as "Harbor Fitness," with the following hours of operation: Monday through Saturday, 5:00 a.m. to 12:00 a.m., and Sunday, 7:00 a.m. to 10:00 p.m.; and

WHEREAS, though the PCE is located entirely within a commercial building, the applicant represents that it does not anticipate adverse noise impacts from the PCE, and noise attenuation measures will be installed in the PCE to ensure that sound levels in other portions of the building do not exceed a maximum level of 45 dBa; specifically, the applicant proposes to install an acoustical suspended ceiling and soundproof insulation in the walls of the PCE, and rubber mats in exercise areas; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in an existing commercial building and in a neighborhood characterized predominantly by commercial and mixed-use buildings with commercial uses on the ground floor; and

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

WHEREAS, the applicant submits that the PCE contains facilities for the provision of physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates the PCE will be an asset to the surrounding community; and

WHEREAS, the applicant states that a wet sprinkler system and an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—will be installed throughout the PCE space; and

WHEREAS, by letter dated December 18, 2018, the Fire Department stated no objection to this application and confirmed that the premises is undergoing major construction for new fire alarm, standpipe, and sprinkler systems on all floors; as per plans filed with the Board, a new fire alarm system and sprinkler system are required for the PCE space; and units in the Bureau of Fire Prevention will be notified of this application before the Board and will inspect the premises if a special permit is granted; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the

MINUTES

PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-13K, dated July 18, 2018; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within C4-2A zoning district and in the Special Bay Ridge District, the operation of a physical culture establishment in portions of the first and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 14, 2019-Four (4) sheets”; and *on further condition*:

THAT the term of the PCE grant will expire on January 15, 2029;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT the fire alarm and sprinkler systems shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-119-BZ”), shall be obtained within four (4) years, by January 15, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2018-132-BZ

CEQR #19-BSA-021M

APPLICANT – Deirdre A. Carson, Greenberg Traurig LLP, for 100 Church Fee LLC, owner; 100 Church Street Tenant, LLC, lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Club*) within an existing building contrary to ZR §32-10. C5-3 Special Lower Manhattan District.

PREMISES AFFECTED – 100 Church Street, Block 125, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated September 18, 2018, acting on Department of Buildings (“DOB”) Application No. 123268775, reads in pertinent part:

A physical culture establishment is not an “As of Right” use. BSA approval is required. A BSA Special Permit pursuant to ZR Sec. 73-36 is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-3 zoning district and in the Special Lower Manhattan District, a physical culture establishment (“PCE”) in a portion of the seventh floor of an existing 19-story plus cellar, sub-cellar and basement commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on the same date; and

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

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

WHEREAS, the subject site is bound by Church Street to the east, West Broadway to the west, Park Place to the north, and Barclay Street to the south, in a C5-3 zoning district and in the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 160 feet of frontage on Church Street, 159 feet of frontage on West Broadway, 335 feet of frontage along each of Park Place and Barclay Street, 53,557 square feet of lot area and is occupied by an existing 19-story plus cellar, sub-cellar and basement commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X,

MINUTES

C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the

foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE will occupy 12,610 square feet of floor area on the seventh floor with areas for cardio and strength equipment, fitness classrooms, spa treatment rooms, men's and women's locker rooms with bathrooms, showers, saunas and steam rooms, and a reception area; and

WHEREAS, the PCE is proposed to operate as "Nexus Club," operating daily from 6:00 a.m. to 12:00 a.m.; and

WHEREAS, the applicant states that sound and vibration attenuation measures will be installed in the PCE space to prevent potential disturbance from the PCE to adjacent occupants in the building including sound and vibration attenuated flooring, acoustical column enclosures and sound-absorbing ceiling treatments; specifically, the applicant proposes to install raised impact-reducing flooring in the fitness classrooms and cardio and strength area of the PCE, acoustic insulation and gypsum board on the columns of the PCE space, and sound-absorbing acoustical spray to the ceilings above areas where loud noises are anticipated; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in an existing commercial building in a commercial district and is in an area that is already heavily trafficked by local residents and employees, retail customers and tourists; and

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

WHEREAS, the applicant submits that the PCE contains facilities for the provision of physical improvement including yoga and spin cycling, as well as facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant states that an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—will be installed throughout the PCE space, which is already protected with a wet sprinkler; and

WHEREAS, by letter dated November 28, 2018, the Fire Department stated no objection to this application and confirmed that the premises have fire suppression systems (standpipe, sprinkler and fire alarm) that have been tested satisfactory and the permits are current; applications have been filed to modify the fire alarm system (Alt. II 123457348) and a Place of Assembly application (PA 123370529) for the PCE space on the seventh floor; and, the Fire Department's Fire Alarm Inspection Unit and Licensed Public Place of Assembly Unit have been notified of this application and will inspect the premises upon receipt of the Board's decision; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE will be part of a members-only club and is not expected to draw a significant number of patrons to the area at any given time; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-021M, dated October 3, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE space on the seventh floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-3 zoning district and in the Special Lower Manhattan District, the operation of a physical culture establishment on a portion of the seventh floor of an existing 19-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 26, 2018-Eleven (11) sheets"; and *on further condition*:

THAT the term of the PCE grant will expire on January 15, 2029;

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

THAT any massages shall be performed only by New York State licensed massage professionals;

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

THAT approved fire alarm and sprinkler systems shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2018-132-BZ"), shall be obtained within four (4) years, by January 15, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2017-268-BZ

APPLICANT – Sheldon Lobel, P.C., for World Chan Buddhist Association, owner.

SUBJECT – Application September 13, 2017– Variance (§72-21) to permit the construction of a three-story plus cellar house of worship (*Buddhist Temple*) (UG 4) with an accessory caretaker's apartment contrary to ZR §24-11 (Floor Area Ratio). R2 zoning district.

PREMISES AFFECTED – 33-73 154th Street, Block 5239, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

MINUTES

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2018-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Gershon Klein, owner.

SUBJECT – Application January 26, 2018 – Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district.

PREMISES AFFECTED – 1238 East 26th Street, Block 7643, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

2018-20-BZ

APPLICANT – Jay Goldstein, Esq., for Jeffrey Ackerman, owner.

SUBJECT – Application February 9, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area and open space) and ZR §23-461(1) (required side yard). R2 zoning district.

PREMISES AFFECTED – 2801 Avenue M, Block 7646, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 15, 2019

1:00 P.M.

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

ZONING CALENDAR

2017-98-BZ

CEQR #17-BSA-110M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Riverside Center Parcel 2 BIT Associates, LLC, owner; SoulCycle 21 West End Avenue, LLC, lessee.

SUBJECT – Application March 29, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*SoulCycle*) within an existing building. C4-7 zoning district.

PREMISES AFFECTED – 21 West End Avenue, Block 1171, Lot 164, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 20, 2017, acting on DOB Application No. 121324717, reads in pertinent part:

Proposed Physical Culture or Health Establishment in Zoning District C4-7 is not permitted as of right. A special permit is required from the Board of Standards and Appeals as per ZR 32-10, ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-7 zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 45-story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the subject site is located on the southwest corner of West End Avenue and West 61st Street, within a C4-7 zoning district, in Manhattan; and

WHEREAS, the site has approximately 260 feet of frontage, 333 feet of depth, 83,139 square feet of lot area,

MINUTES

and is occupied by a 45-story plus cellar and mezzanine mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, the applicant represents that, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each

of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant submitted evidence that the subject PCE occupies 3,801 square feet of floor area on the first floor with a spin cycling studio, reception, retail area, lockers, men's and women's restrooms with showers, laundry area, storage areas, and an office; and

WHEREAS, the applicant represents that the PCE has been in operation since December 2016, as "SoulCycle" with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m.; and, Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located within an existing building and in an area characterized by mixed-use buildings and comparable ground level commercial uses; and

WHEREAS, the applicant represents that sound attenuation measure have been installed in the PCE to ensure that sound levels in other portions of the building do not exceed 45 dBA, including sound emanating from any sound system; specifically, the applicant demonstrated that the spin cycling studio was constructed as a "box within a box," utilizing insulated acoustic partitions in the walls and ceiling surrounding the studio, batt insulation and sound attenuated blankets in voids and airspace in the ceiling, walls and floor of the studio, floor isolators between the slab and floor, and acoustical sealants; and

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

WHEREAS, the applicant represents that the PCE contains facilities for classes, instruction and programs for physical improvement; and

WHEREAS, accordingly, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will be an asset to the surrounding area; and

WHEREAS, the applicant demonstrated that wet sprinkler system and a fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the building’s interior fire alarm to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, by letter dated December 24, 2018, the Fire Department confirmed that the building has a fire suppression system for both the school and residential portions of the building and have been inspected and found satisfactory; there are currently two (2) fire alarm systems at the premises, one for each the school and the residential portion that have been inspected by the Fire Department and a sign-off is pending; the PCE space will be required to have a fire alarm system for their space, which has to be tied back into the residential building fire alarm system; the Bureau of Fire Prevention recommends that the Board in granting a special permit add as a condition that the applicant obtains an approval and sign-off for the fire alarm system; and the agency has no further objection to the application;

WHEREAS, at the hearing, the applicant represented, and the Fire Department confirmed, that a letter of approval for the fire alarm system for the PCE was obtained; accordingly, the Fire Department withdrew its request for a conditional approval; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-110M, dated March 29, 2017; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and

makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-7 zoning district, the operation of a physical culture establishment in a portions of the first floor of an existing 45-story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 29, 2017-Five (5) sheets”; and *on further condition*:

THAT the term of the PCE grant shall expire on December 1, 2026;

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

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT the existing fire alarm and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-98-BZ”), shall be obtained within one (1) year, by January 15, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 15, 2019.

2017-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cee Jay Real Estate Development Corp., owner.

SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a three-story, single family residence contrary to ZR §23-45 (Front Yard), ZR § 23-461(a) (Side Yards on Corner Lots), ZR §25-622 (Parking Spaces between the street wall line and street line) and ZR §23-451 (Plantings on Corner Lots). R3-1 zoning district. PREMISES AFFECTED – 311 Adams Avenue, Block 3679, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

MINUTES

2017-270-BZ

APPLICANT – Edward Lauria, P.E., for Daniel Apice, owner.

SUBJECT – Application September 21, 2017 – Special Permit (§73-53) to permit the enlargement of an automotive body repair facility (UG 17B) contrary to ZR §43-121 (Maximum Permitted Floor Area). M1-1 zoning district.

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2018-21-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saeed Azarfar, owner.

SUBJECT – Application February 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area, open space and lot coverage) and ZR §23-461(a) (required side yard). R3-2 zoning district.

PREMISES AFFECTED – 1773 East 22nd Street, Block 6805, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2018-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jackie Cohen-Arazi, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1249 East 23rd Street, Block 7641, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2018-98-BZ

APPLICANT – Akerman LLP, for GC Cross Bay Realty LLC, owner; 140 Cross Bay Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application May 24, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Planet Fitness*) on a portion of the ground floor and the entire second floor of an existing commercial building contrary to ZR §32-10. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard, Block 14030, Lot(s) 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on March 6, 2018, under Calendar No. 549-67-BZ and printed in Volume 103, Bulletin No. 11, is hereby corrected to read as follows:

549-67-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Irene B. Mancus & Joseph H. Mancuso Testamentary Trust, owner.

SUBJECT – Application October 16, 2015 – Extension of Term & Waiver (11-413) seek an extension of term of a previously variance granted pursuant to (72-21) permitting in an R3-2 zoning district an existing coal and oil establishment structural alterations to existing silos to provide storage rooms amend to legalize masonry extension for use as truck garage and removal silos. R3-2 zoning district.

PREMISES AFFECTED – 5 Elm Tree Lane, Block 5651, Lot 250, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an amendment and an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, with continued hearings on November 14, 2017 and January 23, 2018, and then to decision on March 6, 2018; and

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

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

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1968, when, under the subject calendar number, the Board granted a variance to permit, at an existing coal and oil establishment, structural alterations to the silos to provide storage rooms at grade for a term of five (5) years, expiring November 26, 1976; and

WHEREAS, on February 26, 1974, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring February 26, 1979, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on June 26, 1979, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1984, and amended the variance to permit a one-story masonry extension to be used

for truck garages and the removal of silos on condition that a new certificate of occupancy be obtained within one (1) year, by June 26, 1980; and

WHEREAS, on February 13, 1985, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1989, on condition that all conditions enumerated in the affidavit from the owner marked “Received February 5, 1985,” be complied with, that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by February 13, 1986; and

WHEREAS, on October 24, 1989, under the subject calendar number, the Board granted an extension of term of four (4) years, expiring June 26, 1992, on condition that there be no parking and storage of trucks in the open area at any time, that there be no storage of any materials in the open area at any time and that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by October 24, 1990; and

WHEREAS, on October 18, 1994, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1997, on condition that a new certificate of occupancy be obtained within one (1) year, by October 18, 1995; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted an extension of term of 68 months, expiring June 26, 2003, on condition that a new certificate of occupancy be obtained within one (1) year, by March 3, 1999; and

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

WHEREAS, the applicant proposes to amend the variance to allow the storage of agricultural materials in an open area adjacent to the railroad; and

WHEREAS, at hearing, the Board requested additional information regarding the boundaries of the subject site with regard to potential residences nearby, clarification as to the proposed site plan, the potential effect of agricultural materials and the appropriateness of additional landscaping and screening; and

WHEREAS, in response, the applicant updated the site plan and provided evidence of new perimeter landscaping to buffer the subject site from nearby residences; and

WHEREAS, the applicant represents that the open area proposed to be used for the storage of agricultural materials is as far as feasible from adjacent residences and that the landscaping and distance will prevent potential adverse effects on residences; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term,

MINUTES

amendment and waiver are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 26, 1968, as amended through March 3, 1998, so that as amended this portion of the resolution shall read: “to *permit* an amendment to the variance to permit open storage of agricultural materials on a portion of the subject site adjacent to the railroad tracks and an extension of term of ten (10) years, expiring March 6, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 14, 2018”- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 6, 2028;

THAT there shall be no parking or storage of trucks in the open area at any time;

THAT there shall be no storage of any materials in the open area at any time, except that there may be storage of agricultural materials, which shall be limited to the area within 50 feet of the western lot line, adjacent to the railroad tracks;

THAT the hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks;

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

THAT a certificate of occupancy shall be obtained within one (1) year, by March 6, 2019;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

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

***The resolution has been Amended to correct the Premises which read: ...7-9 Elm Tree Lane... now reads: ...5 Elm Tree Lane.... Corrected in Bulletin Nos. 4-5, Vol. 104, dated January 25, 2019.**

BULLETIN

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February 8, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|--------------------------------------|-------|
| DOCKET | 66/67 |
| CALENDAR of February 12, 2019 | |
| Morning | 68 |
| Afternoon | 68/69 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, January 29, 2019**

Morning Calendar70

Affecting Calendar Numbers:

| | |
|--------------|---|
| 866-49-BZ | 200-01 47 th Avenue, Queens |
| 498-83-BZ | 2131 Hylan Boulevard, Staten Island |
| 93-08-BZ | 113-16 Astoria Boulevard, Queens |
| 247-09-BZ | 123 East 55 th Street, Manhattan |
| 645-59-BZ | 10824 Flatlands Avenue, Brooklyn |
| 410-68-BZ | 85-05 Astoria Boulevard, Queens |
| 624-68-BZ | 188-07/15 Northern Boulevard, Queens |
| 103-70-BZ | 203 East 74 th Street, Manhattan |
| 103-79-BZ | 25-30 44 th Street, Queens |
| 40-80-BZ | 35-41 West 23 rd Street, 39-41 West 23 rd Street, 20-22 West 24 th Street, Manhattan |
| 1059-84-BZ | 943/61 Kings Highway aka 2032 Coney Island Avenue, Brooklyn |
| 813-87-BZ | 110 Boerum Place, Brooklyn |
| 31-91-BZ | 173 Kingsland Avenue aka 635 Meeker Avenue, Brooklyn |
| 159-00-BZ | 383 3 rd Avenue, Brooklyn |
| 322-05-BZ | 69-69 Main Street, Queens |
| 16-12-BZ | 184 Nostrand Avenue, Brooklyn |
| 67-13-A | 945 Zerega Avenue, Bronx |
| 67-13-AIV | 945 Zerega Avenue, Bronx |
| 2018-97-A | 50 Storer Avenue, Staten Island |
| 215-15-A | 144-14 181 st Street, Queens |
| 2017-144-A | 25-30 44 th Street, Queens |
| 2017-323-A | 108 Croak Avenue, Staten Island |
| 87-15-BZ | 182 Minna Street, Brooklyn |
| 17-15-BZ | 133 Beach 5 th Street, Queens |
| 157-15-BZ | 3925 Bedford Avenue, Brooklyn |
| 2016-4127-BZ | 1547 East 26 th Street, Brooklyn |
| 2017-8-BZ | 356-362 East 139 th Street, Bronx |
| 2017-33-BZ | 398 Lenevar Avenue, Staten Island |
| 2018-107-BZ | 1441 South Avenue, Staten Island |

Afternoon Calendar82

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-144-BZ | 551 Madison Avenue, Manhattan |
| 2017-222-BZ | 200-01 116 th Avenue, Queens |
| 2018-8-BZ | 1820 Cropsey Avenue, Brooklyn |
| 2018-16-BZ | 974 Sacket Avenue, Bronx |
| 2018-38-BZ | 1717 Richmond Road, Staten Island |
| 2018-109-BZ | 9-03 44 th Road, Queens |
| 2018-116-BZ | 1982 Utica Avenue, Brooklyn |
| 2018-118-BZ | 710 Avenue W, Brooklyn |

DOCKETS

New Case Filed Up to January 29, 2019

2019-9-BZ

468 Targee Street, Block 00647, Lot(s) 0073, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a new single family detached home, contrary to side yard and open area regulations, ZR §23-461(c), and front yard regulations, ZR §23-45. R3A zoning district. R3A district.

2019-10-BZ

205 West 58th Street, Block 1030, Lot(s) 0029, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (305 Fitness) to be located on the first floor of an existing commercial building contrary to ZR §32-10. C5-1/R10H zoning district. C5-1/R-10H district.

2019-11-BZ)

2811 Brown Street, Block 8800, Lot(s) 0086, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family dwelling contrary to ZR §23-141 (FAR and lot coverage) and ZR §23-45(a) (Front Yard). R4-1 zoning district. R4-1 district.

2019-12-BZ

2813 Brown Street, Block 8800, Lot(s) 0084, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family dwelling contrary to ZR §23-141 (FAR and lot coverage) and ZR §23-45(a) (Front Yard). R4-1 zoning district. R4-1 district.

2019-13-A

11-31 Ryerson Street, Block 1877, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment on December 20, 2018. M1-2 zoning district. M1-2 district.

2019-14-BZY

11-31 Ryerson Street, Block 1877, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district. M1-2 district.

2019-15-BZ

79-40 Cooper Avenue, Block 3803, Lot(s) 1, 39, 164, 178, Borough of **Queens, Community Board: 5**. Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (Children of America) contrary to ZR §42-10. M1-1 zoning district. M1-1 district.

2019-16-BZ

250-01 Northern Boulevard, Block 8129, Lot(s) 0001, Borough of **Queens, Community Board: 11**. Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald's) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts. R3-1/C1-2 and R2A district.

2019-17-BZY

30 West 39th Street, Block 00840, Lot(s) 0030, Borough of **Manhattan, Community Board: 5**. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-6 zoning district. M1-6 district.

2019-18-BZY

35 West 28th Street, Block 00830, Lot(s) 17 and 24, Borough of **Manhattan, Community Board: 5**. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-6 zoning district. M1-6 district.

2019-19-A

107 Manee Avenue, Block 6751, Lot(s) 0260, Borough of **Staten Island, Community Board: 3**. Proposed construction of a three-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District. R3X (SRD) district.

2019-20-BZ

1933 East 14th Street, Block 7293, Lot(s) 0076, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47). R5 zoning district. R5 district.

DOCKETS

2019-21-BZ

2233 East 14th Street, Block 7373, Lot(s) 0078, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement and conversion of an existing single-family home to a two-family residence, contrary to FAR, open space and lot coverage (ZR §23-142); side yards (ZR §§23-461(a) and 23-48) and rear yard (§23-47). R4 zoning district. R4 district.

2019-22-BZ

24-47 95th Street, Block 1106, Lot(s) 0044, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the construction of a semi-detached single-family home contrary to use (ZR §22-12(a)(1); FAR (ZR §23-142); side yards (ZR §23-461) and parking (ZR §25-22). R3X zoning district. R3X district.

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

CALENDAR

REGULAR MEETING FEBRUARY 12, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 12, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

115-53-BZ

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

SUBJECT – Application May 11, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on July 11, 2018. C2-2R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

26-02-BZ

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

SUBJECT – Application December 20, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses, which expired on April 15, 2017; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1680 Richmond Avneue a/k/a 3101 Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

189-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application December 13, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the legalization of a Physical Culture Establishment (New York Sports Club) in the cellar, first and second floors in the six-story mixed-use building which expired on November 18, 2018. C6-2 NOHO Historic District.

PREMISES AFFECTED – 232 Mercer Street, Block 532, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

150-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 30 Broad Street Venture LLC, owner; TSI 30 Broad Street LLC dba New York Sports Club, lessee.

SUBJECT – Application July 13, 2016 – Amendment of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (New York Sports Club) in portions of the second floor and second floor mezzanine with an entrance at the ground level. The amendment seeks to enlarge the establishment into a portion of the sub-cellar and reflect a change in the operator. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, Block 24, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

REGULAR MEETING FEBRUARY 12, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 12, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-58-BZ

APPLICANT – Sahn Ward Coschignano, PLLC, for MOCAL Enterprises, Inc., owner; AKT Broadway LLC, lessee.

SUBJECT – Application April 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (AKT In-Motion) on the second floor of an existing mixed-use building contrary to ZR §42-10. M1-6 (Madison Square North Historic District).

PREMISES AFFECTED – 1182 Broadway, Block 830, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

2018-140-BZ

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

SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.

PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

2018-155-BZ

APPLICANT – Jay Goldstein, Esq., for Moishe Loketch, owner.

SUBJECT – Application October 9, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461(A) (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 1123 East 27th Street, Block 7627, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-165-BZ

APPLICANT – Jay Goldstein, Esq., for RS Associates LLC, owner; CorePower Yoga, lessee.

SUBJECT – Application October 18, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*CorePower Yoga*) on a portion of the first floor on an existing building contrary to ZR §32-10. C6-2A (TMU) Tribeca West Historic District.

PREMISES AFFECTED – 25 Hudson Street, Block 141, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 29, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

866-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for 2912 Realty, LLC, owner; A & AM Diagnostic Service Centers, Inc., lessee. SUBJECT – Application July 19, 2016 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 200-01 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening, an extension of term to a previously granted variance, which expired on October 7, 2015, an extension of time to obtain a certificate of occupancy, which expired on November 14, 2007, and an amendment to the variance; and

WHEREAS, a public hearing was held on this application on January 9, 2018, after due notice by publication in *The City Record*, with continued hearings on October 23, 2018, January 15, 2019, January 29, 2019, and then to decision on that same date; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) letter in support of this application; and

WHEREAS, the subject site is located on the northeast corner of 47th Avenue and Francis Lewis Boulevard, in an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 111 feet of frontage on 47th Avenue, 116 feet of frontage on Francis Lewis Boulevard, 13,500 square feet of area and is occupied by a one- (1) story gasoline service station and accessory

building (Use Group (“UG”) 16); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 21, 1950, when, under the subject calendar number, the Board granted a variance to permit, on a site then-located partially in a residence use district and partially in a local retail use district, the erection and maintenance of a one- (1) story gasoline service station with auto washing, lubrication, office and sales of auto accessories, for a term of 15 years, to expire March 21, 1965, on condition that the premises be leveled substantially to the grade of the adjoining streets and be constructed and arranged substantially as shown on BSA-approved plans; the accessory building be located and constructed and arranged substantially as proposed and of the design as shown, complying with the requirements of the Building Code; there be no cellar under the accessory building; pumps be constructed not nearer than ten (10) feet to the street building line; curb cuts be restricted to three (3) located as shown not over 30 feet in width each; sidewalks and curbing be constructed and maintained to the satisfaction of the Borough President; the number of gasoline storage tanks not exceed six (6); along the side lot lines to the north and east there be constructed a substantial steel picket fence on the masonry base not less than two (2) feet in height to a total height of not less than five (5) feet six (6) inches; such fence may be reduced within ten (10) feet of either building line to a height of not less than four (4) feet; signs be restricted to a permanent sign attached to the front façade of the accessory building excluding all roof signs and all temporary signs but permitting the erection within the building like of a post standard, located as shown, for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale, and permitting such sign to extend beyond the building line not more than four (4) feet; planting against the fence and at the rear of the accessory building be maintained as proposed and as shown with suitable planting material and protected with a concrete curb not less than six (6) inches above grade and six (6) inches in width; the gasoline pumps be of the parkway type, as proposed, with masonry to match the accessory building; where not occupied by the accessory building, planting and pumps, the premises be paved with concrete or other bituminous paving; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; all permits be obtained and all work completed within one (1) year, by March 21, 1951; and

WHEREAS, on March 10, 1953, under the subject calendar number, the Board amended the variance to permit the proposed extension of the gasoline service station, primarily to provide parking in connection with the gasoline service station for cars awaiting service, on condition that the arrangement be as indicated on revised approved plans submitted with the application; the existing curb cut may be rearranged as thereon shown; suitable planting where indicated, properly protected with concrete curbing, be maintained, and the brand sign may be relocated as thereon indicated but not nearer than 25 feet to the side lot line to the north; the premises where parking is proposed be paved with

MINUTES

concrete or bituminous paving similar to that on the gasoline service station; the additional gasoline pumps to be installed where indicated may be installed, provided they are of an approved type and located not nearer than ten (10) feet to the street building line; the uses be complied with where not inconsistent with this amendment; and, all permits required be obtained and all work completed within one (1) year, by March 10, 1954; and

WHEREAS, on September 24, 1957, under the subject calendar number, the Board amended the variance, adopted on March 21, 1950, as amended through March 10, 1953, by adding that in the event the owner desires to extend the accessory building by the construction of a one- (1) story brick extension for car washing and thereby reduce the seeded area as hereinbefore required, such extension may be permitted as proposed and shown on plans filed with the application, on condition that in all other respects the resolutions above cited be complied with; the outside greasing pit not previously permitted by the Board be removed; the number of gasoline storage tanks may be increased by four (4), making a total of 12 such tanks as indicated on above-cited plans; and, all permits required be obtained and all work completed within one (1) year, by September 24, 1958; and

WHEREAS, on November 6, 1957, under the subject calendar number, the Board amended the resolution, as amended through September 24, 1957, by adding that the construction and extension to the accessory building may include an addition to the proposed extension at the rear, as shown on revised approved plans filed with the application; and that in all other respects the resolution be complied with; and

WHEREAS, on May 29, 1962, under the subject calendar number, the Board amended the resolution, as amended through November 6, 1957, to permit minor auto repairs solely within the accessory building, as shown on revised approved plans filed with the application, on condition that other than as amended the resolution be complied with in all respects;

WHEREAS, on April 6, 1965, under the subject calendar number, the Board extended the term of the variance for ten (10) years, to expire April 6, 1975, on condition that other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained; and

WHEREAS, on October 7, 1975, under the subject calendar number, the Board waived its Rules of Procedure, reopened and amended the variance as to the term and granted a ten (10) year extension, to expire October 7, 1985, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on January 19, 1988, under the subject calendar number, the Board waived its Rules of Procedure, reopened and amended the resolution, pursuant to ZR § 11-411, as amended through October 7, 1975, to grant a ten (10) year extension of term, to expire October 7, 1995, on

condition that the sanitation containers be moved from the north end to the south end of the station; the installation of a speed bump with the word "slow" painted on it be installed on the lot line leading to the curb cut on Francis Lewis Boulevard and 47th Avenue and there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by January 19, 1989; and

WHEREAS, on October 29, 1991, under the subject calendar number, the Board reopened and granted a one (1) year extension of time to obtain a certificate of occupancy, by October 29, 1992;

WHEREAS, on April 23, 1996, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-412, reopened and amended the resolution, as amended through October 29, 1991, to permit the replacement of four (4) gas pumps with two (2) and the erection of a metal canopy over the fuel dispensing area and extend the term, on condition that the term of the variance be extended for ten (10) years, to expire October 7, 2005; lighting levels and fixtures be as provided on BSA approved plans; the premises be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed and a new certificate of occupancy be obtained within one (1) year, by April 23, 1997; and

WHEREAS, on November 14, 2006, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for ten (10) years, to expire on October 7, 2015, and to legalize the conversion of a portion of the building to an accessory convenience store, a change in the fencing material, and a change in the signage; and to permit certain proposed site modifications, on condition that the use substantially conform to approved plans filed with the application; the term of the grant expire on October 7, 2015; all fencing be maintained in good condition; the above conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by November 14, 2007; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance and the time to obtain a certificate of occupancy having expired, the applicant seeks an extension of the term of the variance and an extension of time to obtain a certificate of occupancy; and

MINUTES

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) to permit the filing of this application less than two (2) years after the expiration of the term, and more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized pursuant to the 1916 Zoning Resolution; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the construction of a trash enclosure on the site; and

WHEREAS, in response, the applicant provided photographs to demonstrate installation of a fence wall and trash enclosure as requested; and

WHEREAS, by letter dated October 9, 2018, the Fire Department stated that it had no objection to this application and stated that the automotive service station is current with their Fire Department permits with respect to storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; and

WHEREAS, the applicant also seeks an amendment to reflect minor changes to the layout of the site and signage, a 147 square foot storage container, and the removal of the condition requiring a speed bump; and

WHEREAS, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy, and amendment to reflect the above changes to the subject site are appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals, *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 21, 1950, as amended through November 14, 2006, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of ten (10) years, and an extension of time to obtain a certificate of occupancy; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 28, 2019"-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2025;

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

THAT all fencing shall be maintained in good condition;

THAT all signage shall comply with C1 zoning regulations;

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

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

THAT a certificate of occupancy indicating this approval and calendar number ("BSA Cal. No. 866-49-BZ")

shall be obtained within one (1) year, by January 29, 2020; and

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

Adopted by the Board of Standards and Appeals, January 29, 2019.

498-83-BZ

APPLICANT – Rampulla Associates Architects, for 2131 Hylan Holding, llc, owner.

SUBJECT – Application June 16, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a then existing banquet hall into the residential portion of the lot and permitted accessory parking within the residential portion of the lot. The amendment seeks to demolish the existing building to permit the development of an As-of-Right commercial building retaining the accessory parking on the residential portion of the lot; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. C8-1 & R3X (Lower Density Growth Management Area)

PREMISES AFFECTED – 2131 Hylan Boulevard, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 22, 2017, acting on New Building Application No. 520279252, reads in pertinent part:

"ZR 22-00 The proposed construction of a 3 story commercial building in the C8-1 portion of the lot with 51 accessory parking spaces located in the R3X portion of the zoning lot is contrary to BSA Cal 498-83-BZ and is referred back to the NYC Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR §§ 72-01 and 72-22 for an amendment to permit, partially in an R3X zoning district and partially in a C8-1 zoning district, 51 accessory off-street parking spaces that do not comply with use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed

MINUTES

inspections of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the southwest corner of Hylan Boulevard and 54th Street, partially in an R3X zoning district and partially in a C8-1 zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 122 feet of frontage along Hylan Boulevard, 100 feet of frontage along 54th Street, 11,168 square feet of lot area and is occupied by a three-story, with cellar, commercial building with 56 accessory off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 23, 1978, when, under BSA Calendar Number 612-77-BZ, the Board granted a variance to permit, in an existing three-story mixed-use building, the conversion of the second and third floors from two apartments into four apartments that increased the degree of non-conformity on condition that a smoke detecting device be installed in each apartment and that heat sensor devices be installed in the cellar and first floor and these heat detecting services be interconnected; and

WHEREAS, on May 23, 1978, under BSA Calendar Number 61-78-A, the Board granted an application under the Multiple Dwelling Law to permit to be altered or converted to a four-family class A multiple dwelling and increasing the number of apartments and rooms in a frame building; and

WHEREAS, on January 31, 1984, under the subject calendar number, the Board granted a variance to permit, on a site with an existing mixed-use building previously before the Board, the maintenance of a one-story enlargement to the first floor banquet hall and cabaret establishment extending into the residential zoning district with accessory parking as well in the residential zoning district and to legalize an increase in the number of apartments that creates non-conformity on condition that the owner comply with the conditions set forth in the conditional negative declaration, that landscaping around the parking area be maintained and replaced when necessary, that the entrance to the parking lot be from Hylan Boulevard, that an attendant be on duty in the parking booth at all times while the banquet hall is in use, that the parking lot comply with all applicable rules of the Department of Buildings, that the gates to the parking lot be closed and locked when the subject site is closed and that the cabaret use be limited to the areas shown on the Board-approved drawings; and

WHEREAS, on January 31, 1984, under the subject calendar number, the Board granted an application to permit the conversion of a class A multiple dwelling from two to four families and the use of drywells for the disposal of storm water on condition that, among other things, the volume of the dry wells be of sufficient capacity to contain 2" of water over the entire lot, as verified by the Department of Buildings, that the volume of voids of selected gravel carefully placed under and to the sides of the dry wells may be used to satisfy the required retained volume as long as it

represents not more than 25 percent of the volume required, a minimum of 75 percent of volume to be within the dry wells, that if the dry wells are located in an impermeable layer of soil, a sand column be used to give the accumulated water access to a permeable layer of soil, with the location, volume and cross-sectional area of the column being satisfactory to the Department of Buildings and that when a storm sewer is constructed in the street fronting this site, the structure then will connect to such sewer; and

WHEREAS, on June 25, 1985, under the subject calendar number, the Board amended the variance to change of use on the second floor from two residential apartments to two bridal suites, manager's office and lobby; on the third floor from two residential apartments to light storage (50 pounds per square foot live load limit); to add two small additions to the first floor; to change the design of the front façade of the first story; to substitute a new enclosed stair tower on all floors on the northerly side of the building for the existing fire escape and to change the interior layout; and to add the live load limitation to the amended certificate of occupancy; and

WHEREAS, by letter dated January 3, 2000, the Board approved allowed a change in the Board-approved plans to create a new façade, front entrance and a covered walkway with an accessibility ramp; and

WHEREAS, on April 8, 2014, under the subject calendar number and BSA Calendar Number 34-14-BZ, the Board amended the variance and granted a special permit for the operation of a physical culture establishment on condition that the term of the PCE grant will expire on April 8, 2024, that the parking lot will be limited to 51 spaces and will be used only by patrons and employees of the PCE, that signage and landscaping/buffering of the parking lot will be in accordance with the Board-approved plans, that signage will be in accordance with the Board-approved plans, that there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that any massages will be performed only by New York State licensed massage professionals, that Local Law 58/87 compliance will be as reviewed and approved by DOB, that fire safety measures will be installed or maintained as shown on the Board-approved plans, that the above conditions will appear on the certificate of occupancy; and that an amended certificate of occupancy will be obtained by April 8, 2015; and

WHEREAS, the applicant proposes to develop a three-story commercial building with 28,077 square feet of floor area and to reduce the number of accessory off-street parking spaces from 56 to 51 parking spaces; and

WHEREAS, the applicant states that, in the portion of the subject site in an R3X zoning district, no off-street parking spaces accessory to a commercial use are permitted as of right; and

WHEREAS, by Zoning Resolution Determination Control No. 56143, dated January 4, 2019, DOB states: "there is no additional parking required for proposed new building in compliance with ZR 64-721 and its additional

MINUTES

floor area The existing second and third floors are accessory to the main Banquet Hall Use on the first floor for which the 56 Voluntary parking spaces were justified as a ‘NEED’ to provide on-site parking but not as required parking under Section 32-21 ZR. Therefore, for the purposes of calculated required parking pursuant to ZR 32-21 for the New Building the existing 12,796 sf Banquet Hall space of the existing building shall be subtracted from the proposed 28,077 building, which equals 15,281. Within the C8-1 zoning district 15,281 sf additional area shall provide one (1) parking space per 300 S.F. of floor area or fifty-one (51) off-street parking spaces.”; and

WHEREAS, the applicant submits that the circumstances warranting the original grant still obtain and that providing 51 parking spaces reduces the degree of non-compliance; and

WHEREAS, the applicant notes that the parking lot is proposed to be upgraded with planting beds of varying widths and lengths to provide perimeter landscaping; that the parking lot would provide more than 7 feet of perimeter landscaping along Bedford Avenue and 7’-5” of landscaped buffering adjacent to residences; that a fence and planting separate the parking lot and provides buffering from adjacent residences along Bedford Avenue; and

WHEREAS, the applicant states that additional planting is proposed between the lot line and the street widening line along the subject site’s Bedford Avenue street frontage; that planting would not be considered a building or other permanent improvement that would trigger compliance with Section 35 of the General City Law; that two existing curb cuts are proposed to be relocated for better accessibility along Bedford Avenue; and that the existing curb cut along Hylan Boulevard is proposed to be discontinued and closed; and

WHEREAS, the applicant submits that the proposed building complies with applicable zoning regulations, and the Board notes that nothing herein shall be regarded as waiving such provisions and that DOB must ensure that the proposed building complies with the Zoning Resolution; and

WHEREAS, based upon its review of the record, the Board has determined that the proposed amendment is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated January 31, 1984, as amended through April 8, 2014, so that as amended this portion of the resolution shall read: “to *permit* 51 accessory off-street parking spaces to be located in an R3X zoning district; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 17, 2019”-Eight (8) sheets; and *on further condition*:

THAT there shall be 51 accessory off-street parking spaces, as illustrated on the Board-approved plans;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 498-83-BZ”),

shall be obtained within four (4) years, by January 29, 2023;

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

That this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, January 29, 2019.

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for LGA Hospitality LLC, owner.

SUBJECT – Application September 14, 2018 – Extension of Time to Complete Construction of a Variance (§72-21) permitting the construction of a six-story transient hotel (UG 5) which expired on June 4, 2017; Waiver of the Board’s Rules.

PREMISES AFFECTED – 113-16 Astoria Boulevard, Block 1706, Lot 11, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening, waiver of the Board’s Rules of Practice and Procedure, and an extension of time to complete construction of a six- (6) story transient hotel (Use Group (“UG”) 5) pursuant to a variance, previously granted pursuant to ZR § 72-21, which expired on June 4, 2017; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2019, and then to decision on that date; and

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

WHEREAS, the subject site is located on the southwest corner of Astoria Boulevard and 112th Place, in an R6A zoning district, in Queens; and

WHEREAS, the site is an irregularly shaped lot with approximately 152 feet of frontage on Astoria Boulevard, 96 feet of frontage on 112th Place, 16,141 square feet of lot area, and is under construction; and

MINUTES

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2009, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a six- (6) story hotel building (UG 5), proposed to have a total floor area of approximately 48,423 sq. ft. (3.00 FAR), with 126 rooms and 31 accessory parking spaces (17 spaces in the cellar and 14 spaces at grade in a parking lot at the building's rear) on condition that any and all work substantially conform to plans, as they apply to the objections, filed with this application; street trees be planted in accordance with ZR § 28-12; all signage comply with C1 zoning district parameters; the above conditions be stated on the certificate of occupancy; construction be completed in accordance with ZR § 72-23, by January 13, 2013; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the grant be contingent upon final approval from the Department of Environmental Protection ("DEP") before an issuance of construction permits other than permits needed for soil remediation; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on June 4, 2013, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the time to complete construction for a period of four (4) years, to expire on June 4, 2017, and to permit the construction of a sub-cellar to accommodate 28 parking spaces, reducing the number of spaces provided at grade to three (3), on condition that all work substantially conform to plans, as they apply to the objections, filed with this application; construction be completed and a certificate of occupancy be obtained by June 4, 2017; all conditions from prior resolutions not specifically waived by the Board remain in effect; the number of guest rooms, floor area, FAR, and accessory off-street parking spaces for the proposed building will be in accordance with the terms of the grant; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(c)(2) to permit the filing of this application less than two (2) years after the expiration of the time to complete construction; and

WHEREAS, the applicant submits that the

commencement of construction at the site has been delayed for the following reasons: a change in ownership in April 2014 that required revising applications with various agencies; negotiations over an access agreement with a neighboring site, which began in 2014, was not finalized until April 2016; a fire at the subject site delayed DOB approval of demolition applications throughout 2016; the project required a new support of excavation plan; and, due to soil conditions of the subject site and neighboring properties, a previously proposed deep well system was abandoned for a localized well point design to minimize impact on neighboring structures that was approved in June 2018; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding timeline for construction and the remediation of the contamination at the site and requested evidence that excavation has proceeded according to the New York City Office of Environmental Remediation ("OER") and New York State Department of Environmental Conservation ("DEC") requirements; and

WHEREAS, in connection with the North Corona Rezoning approved by the City Council on September 17, 2003, an "E" designation for hazardous materials was mapped on the subject site (E-121) shown on the City Zoning Map panel 10b; and

WHEREAS, in response to the Board's inquiry, the applicant provided a timeline for construction completion, provided updated construction progress photographs, and submitted a notice to proceed from OER (OER Project No. 10EHAZ318Q), dated March 23, 2015, and a DEC certificate of completion of the Brownfield Cleanup Program (Agreement Index No. C241141-02-13), dated December 26, 2018; and

WHEREAS, based upon its review of the record, the Board finds that a three (3) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives Rule § 1-07.3(c)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 13, 2009, as amended on June 4, 2013, so that as amended this portion of the resolution reads: "to grant a three (3) year extension of time to complete construction to January 29, 2022, on condition:

THAT substantial construction shall be completed by January 29, 2022, as evidenced by an inspection and determination by the Department of Buildings;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 93-08-BZ") shall be obtained within four (4) years, by January 29, 2023;

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

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

MINUTES

DOB/other jurisdiction objection(s); and

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

Adopted by the Board of Standards and Appeals, January 29, 2019.

247-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Central Synagogue, owner.

SUBJECT – Application July 11, 2018 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (Central Synagogue), which expired on June 10, 2018. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application Withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which expired on June 10, 2018; and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the site is located on the north side of East 55th Street, between Lexington Avenue and Park Avenue, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 56 feet of frontage, 100 feet of depth, 5,649 square feet of lot area and is occupied by a nine-story Use Group (“UG”) 4 community facility building; and

WHEREAS, the site is part of a combined zoning lot created pursuant to a Declaration of Restrictions and Zoning Lot Merger, dated September 3, 1981, which also includes adjacent tax lots 9, 12 and 63, the easternmost part of which (specifically, tax lot 12) is partially located within a C5-2.5 zoning district and the Special Midtown District; and

WHEREAS, the Board has exercised jurisdiction over the subject tax lot since February 23, 2010, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit a two-story enlargement of the existing building that does not comply with applicable zoning requirements for floor area and initial setback, contrary

to ZR §§ 33-12, 33-432 and 81-211, on condition that all work substantially conform to drawings as they apply to the objections noted, filed with the application; that the parameters of the proposed building not exceed those reflected on the Board-approved plans, including a maximum floor area of 41,550 square feet and a maximum height of 130 feet; DOB review and approve the parameters of the roof top enclosure for compliance with zoning and all other relevant regulations; any change in use, occupancy, or operator of the building require review and approval by the Board; and that construction proceed in accordance with ZR § 72-23, that is, by February 23, 2014; and

WHEREAS, on June 10, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to grant a four-year extension of time to complete construction, expiring June 10, 2018, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the time to have completed construction pursuant to the 2010 variance grant having expired, the applicant seeks the subject relief, specifically a four-year extension of time to complete construction; and

WHEREAS, the applicant submits that a further extension of time is required for the operator of the building, a non-profit synagogue, to secure the financing necessary to perform the work permitted by the variance and reports that no construction pursuant to the variance has yet commenced; and

WHEREAS, by letter dated January 22, 2019, the applicant requested withdrawal of the application; and

WHEREAS, the Board notes that absent the substantial completion of construction at the site pursuant to the variance by June 10, 2018, or the grant of a further extension of time, the variance, originally granted on February 23, 2010, has lapsed.

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application.

Adopted by the Board of Standards and Appeals, January 29, 2019.

645-59-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Board’s Rules. C2-3/R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

MINUTES

410-68-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for GNB Auto Repair, Inc., owner; Alessandro Bartellino, lessee.

SUBJECT – Application May 3, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 26, 2018. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

624-68-BZ

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

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

103-70-BZ

APPLICANT – Herrick Feinstein LLP, for 203 East 74 LLC, owner.

SUBJECT – Application July 24, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. C1-9/R8B zoning district.

PREMISES AFFECTED – 203 East 74th Street, Block 1429, Lot 103, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for decision, hearing closed.

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for adjourned hearing.

40-80-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 39 West 23rd Street, LLC, owner.

SUBJECT – Application October 25, 2018 – Amendment of a previously variance (§72-21) to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development and approval of previously constructed rooftop additions totaling 754 square feet. M1-6 Ladies’ Mile Historic District.

PREMISES AFFECTED – 35-41 West 23rd Street, 39-41 West 23rd Street, 20-22 West 24th Street, Block 825, Lot(s) 20, 60, 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for decision, hearing closed.

1059-84-BZ

APPLICANT – Kennedys CMK LLP, for BMS Realty Co., LLC, owner; Hewlett Bay Park, lessee.

SUBJECT – Application July 5, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) to permit changes to the interior partitions and layout. C4-2/C9-2 (Special Ocean Parkway District).

PREMISES AFFECTED – 943/61 Kings Highway aka 2032 Coney Island Avenue, Block 6666, Lot 18 Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for postponed hearing.

MINUTES

813-87-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 110 BP Property LLC, c/o Hidrock Properties, owners; TSI Cobble Hill LLC dba New York Sports Club, lessee
SUBJECT – Application August 28, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) which expired on April 12, 2018; Amendment to request a change in hours of operation; Waiver of the Rules. C2-3 (R6) zoning district.
PREMISES AFFECTED – 110 Boerum Place, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.
SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012;. Waiver of the Rules. R6 & R6B zoning districts.
PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

159-00-BZ

APPLICANT – Eric Palatnik, P.C., for Al-Iman Center, Inc., owner.
SUBJECT – Application September 21, 2015 – Extension of Term & Amendment (72-01): extension of term of a previously granted variance of a Use Group 3 school and an Amendment for elimination of the term of the variance and a change and minor plumbing and portion alterations. C8-2 zoning district.
PREMISES AFFECTED – 383 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.
SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired

on March 7, 2017. R4B zoning district.
PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for adjourned hearing.

16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.
SUBJECT – Application April 2, 2015 – Amendment of a previously approved Special Permit (§73-19) permitting a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). The amendment seeks changes to the interior, an increase in the height of the building. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 01753, Lot 0042, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO REOPEN –
Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.
SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9X

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for adjourned hearing.

67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building’s determinations *a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA’s prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A.

MINUTES

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2018-97-A

APPLICANT – Edward Lauria, P.E., for Salvatore Noto, owner.

SUBJECT – Application May 24, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District.

PREMISES AFFECTED – 50 Storer Avenue, Block 7315, Lot 78, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated May 16, 2018, acting on Department of Buildings Application No. 520329635 reads in pertinent part:

GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of a one-story Use Group (“UG”) 17 contractor’s establishment with frontage on Storer Avenue and Muriel Street, paved streets not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

WHEREAS, the subject site is located on the northwest corner of Storer Avenue and Muriel Street, in an M1-1 zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site is located approximately 414 feet east of the intersection of Storer Avenue and the eastern record line of Arthur Kill Road, a mapped street; and

WHEREAS, the applicant states that Storer Avenue is paved to a width of approximately 50 feet and that the subject site will be accessed by an existing 16-foot wide curb cut; and

WHEREAS, by letter dated July 26, 2018, the Office of the Staten Island Borough President states that Storer Avenue, at the subject location—specifically, from the eastern record line of Arthur Kill Road easterly to a point 192 feet west of Carlin Street—is not a final mapped street, has a record width of 50 feet and is the subject of an Opinion of Dedication, dated January 31, 1991, as in use for a width of between 35 and 53 feet; and that Muriel Street at the subject location—specifically, from the northern record line of Sharrotts Road to the northern record line of Storer Avenue—is not a final mapped street, has a record width of 50 feet, is not owned by the City and is not the subject of an Opinion of Dedication; and

WHEREAS, the site has approximately 81 feet of frontage along Storer Avenue, 94 feet of frontage along Muriel Street, 7,951 square feet of lot area and is occupied by a UG 17 contractor’s yard, which will be demolished to facilitate the proposed development; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 1986, when, under BSA Cal. No. 797-85-A, the Board granted an appeal of a DOB decision by the power vested in the Board by Section 36 of the General City Law, to permit the issuance of a certificate of occupancy for a building that does not front on a mapped street, on condition that the sidewalk, curb, curb cut and pavement to the middle of the street be in accordance with the standards of the Department of Highways; the building substantially comply with the drawings filed with the application; and, all laws, rules and regulations be complied with; and

WHEREAS, by letter dated October 12, 2018, the New York City Department of Environmental Protection (“DEP”) states that there is an eight- (8) inch diameter City water main in Storer Avenue at the subject location; the Storm and Sanitary Sewer Network, Clay Pit Ponds Park Watershed, NO: TD-7, Sheet 5 of 7, dated January 29, 2002, shows a ten- (10) inch diameter sanitary and 24-inch diameter storm sewer in Storer Avenue, east of the intersection with Arthur Kill Road; that the applicant has submitted a copy of the Self-Certified Site Connection Proposal SCP # 5/33-17(SC), which shows a septic tank for sanitary discharge and dry wells for storm discharge; that it is anticipated that the owner will maintain the sewer and water connections and it will not be maintained by the City of New York and that, based on the foregoing, DEP has no objection to the proposed application; and

WHEREAS, the applicant submits that the site will comply with all applicable provisions of the Zoning Resolution, including, but not limited to, off-street accessory parking and screening, and other New York City regulations, and the proposed building will be fully sprinklered and utilize a code-compliant septic system; and

MINUTES

WHEREAS, the applicant additionally states that the nearest fire hydrant is located directly across the street from the subject location, that many streets located directly to the south are improved and in good condition, that the proposed building will generate few additional trips to the site, which already operates as a contractor's yard, and, thus, will have minimal impact on traffic on Arthur Kill Road; and

WHEREAS, by letter dated January 26, 2019, the Fire Department stated no objection to the application; and

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

Therefore, it is Resolved, that the decision of the Department of Buildings dated May 16, 2018, acting on Department of Buildings Application No. 520329635, 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 drawings filed with the application marked "Received October 18, 2018"-Four (4) sheets plus "Drawing No. BPP-001.00," (dated December 11, 2017); that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

THAT the subject building shall be fully sprinklered, as indicated on the Board-approved plans;

THAT the above condition shall be noted on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-97-A"), shall be obtained within four (4) years, by January 29, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, January 29, 2019.

215-15-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Farhad Bokhour, owner.

SUBJECT – Application September 1, 2015 – Proposed construction of a two story two family dwelling (U.G. 2), located within the bed of a mapped street contrary to Article 3, Section 35, of the General City Law, within an R3A zoning district.

PREMISES AFFECTED – 144-14 181st Street, Block 13089, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to July 16,

2019, at 10 A.M., for continued hearing.

2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for adjourned hearing.

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.

SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

87-15-BZ

APPLICANT – Law Office of Jay Goldstein, for Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application April 17, 2015 – Variance (§72-21) to permit the development of a new community facility (UG 3) contrary to underlying bulk requirements. R5 zoning district.

PREMISES AFFECTED – 182 Minna Street, Block 5302, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Negative:0

Adopted by the Board of Standards and Appeals, January 29, 2019.

MINUTES

17-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beach Front Estates LLC, owner.

SUBJECT – Application January 26, 2015 – Variance (72-21) to allow the construction of a four story residential building at the premises, located within an R4A zoning district.

PREMISES AFFECTED – 133 Beach 5th Street, Block 15609, Lot Tentative 40, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2016-4127-BZ

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26th Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26th Street, Block 6773, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – Variance (§72-21) to permit the construction of a new school (UG 3) (*Academic Leadership Charter School*) contrary to ZR §24-11 (Maximum Allowable Lot Coverage), ZR §24-522 (Heights and Setbacks) and ZR §2436 (Rear Yard). R6 zoning district.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to February

26, 2019, at 10 A.M., for adjourned hearing.

2017-33-BZ

APPLICANT – Philip L. Rampulla, for Dorothy Lasiello, owner.

SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a single family detached home contrary to ZR §23-142 (Minimum Yards), ZR §107-251 (Setback), ZR §107-42 (Lot Area and Lot Width) and ZR §107-462 (Side Yard). R3X zoning district. (South Richmond Special District) (Special Area LL) (Lower Density Growth Management Area).

PREMISES AFFECTED – 398 Lenevar Avenue, Block 6949, Lot 26, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

2018-107-BZ

APPLICANT – Eric Palatnik, P.C., for Corporate Commons Three, LLC, owner.

SUBJECT – Application July 5, 2018 – Variance (§72-21) to permit a school campus (UG 3) (Integration Charter Schools) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1441 South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 29, 2019
1:00 P.M.**

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

ZONING CALENDAR

2018-144-BZ

CEQR #19-BSA-031M

APPLICANT – Akerman LLP, for Lexin NY 551 LLC, owner; Nova Fitness, Inc., lessee.

SUBJECT – Application September 4, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*NOVA Fitness*) to be located on a portion of the third floor of an existing commercial building contrary to ZR §32-10. C5-3 zoning districts.

PREMISES AFFECTED – 551 Madison Avenue, Block 1291, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated August 3, 2018, acting on Department of Buildings (“DOB”) Application No. 123459514, reads in pertinent part:

Proposed Physical Culture Establishment is not permitted as-of-right as per ZR 32-31. Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C5-3 zoning district and in the Special Midtown District, a physical culture establishment (“PCE”) in a portion of the third floor of an existing 17-story plus cellar and sub-cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the subject site is located on the northeast corner of Madison Avenue and East 55th Street, in a C5-3 zoning district and in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 75 feet of

frontage on Madison Avenue, 100 feet of frontage on East 55th Street, 7,541 square feet of lot area and is occupied by an existing 17-story plus cellar and sub-cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 1,920 square feet of floor area on the third floor with a training studio, changing areas with lockers and showers, a reception area, office and staff break room; and

WHEREAS, the PCE has operated since October 9, 2018, as “NOVA Fitness,” and operates Monday through Friday from 6:00 a.m. to 8:00 p.m.; and

WHEREAS, although the building has no residential uses within, the applicant states that sound and vibration attenuation measures have been provided in the PCE space to mitigate any potential disturbance to the building’s commercial tenants; specifically, the PCE is utilizing rubber floor tiles, sound-attenuated stud walls and a suspended acoustic ceiling; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in an existing commercial building in a predominantly commercial area and is consistent with the mix of nearby uses including other gyms, offices, eating and drinking establishments, and retail stores; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the operation of the PCE and sound attenuation measures taken will ensure no adverse effects from the PCE; and

WHEREAS, the applicant states that the PCE is protected with a wet sprinkler system and an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station; and

WHEREAS, by letter dated December 24, 2018, the Fire Department stated no objection to the application and confirmed that the premises is protected by a combination fire suppression (standpipe and sprinkler) system, which has been inspected and tested satisfactory by the Fire Department; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-031M, dated September 7, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the third floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C5-3 zoning district and in the Special Midtown District, the operation of a physical culture establishment on a portion of the third floor of an existing 17-story plus cellar and sub-cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 29, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 9, 2028;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler

MINUTES

shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-144-BZ”), shall be obtained within one (1) year, by January 29, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 29, 2019.

2017-222-BZ

APPLICANT – Gerald J. Caliendo, AIA, P.C., for Avi Tsadok, owner.

SUBJECT – Application July 3, 2017 – Variance (§72-21) to permit the construction of a two-family residence contrary to ZR §23-142 (Floor Area) and ZR §23-45 (Front Yard Requirements). R3A zoning district.

PREMISES AFFECTED – 200-01 116th Avenue, Block 11041, Lot 9, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board’s Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board’s Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

2018-38-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph LaForgia, owner.

SUBJECT – Application March 15, 2018 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility contrary to ZR §32-15. C1-2/R1-2 zoning district.

PREMISES AFFECTED – 1717 Richmond Road, Block 887, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-118-BZ

APPLICANT – Law Office of Lyra J. Altman, for Abdo Chakkalo and Norma Chakkalo, owners.

SUBJECT – Application July 13, 2018– Special Permit (§73-622) to permit the enlargement of an existing one family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space) and ZR § 23-47 (rear yard). R4 Special Ocean Parkway district.

PREMISES AFFECTED – 710 Avenue W, Block 7184, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|--------------------------------------|----|
| DOCKET | 88 |
| CALENDAR of February 26, 2019 | |
| Morning | 89 |
| Afternoon | 90 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, February 5, 2019**

Morning Calendar91

Affecting Calendar Numbers:

| | |
|---------------------------|---|
| 490-72-BZ | 4200 Baychester Avenue, Bronx |
| 244-97-BZ | 158/62 West 83 rd Street, Manhattan |
| 176-99-BZ | 45-17 Marathon Parkway, Queens |
| 280-01-BZ | 663-673 Second Avenue & 241-249 East 36 th Street, Manhattan |
| 156-03-BZ | 135-35 Northern Boulevard, Queens |
| 141-06-BZ | 2084 60 th Street, Brooklyn |
| 127-15-BZ | 135-35 Northern Boulevard, Queens |
| 539-66-BZ | 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Queens |
| 81-74-BZ | 97-27 57 th Avenue, Queens |
| 103-79-BZ | 25-30 44 th Street, Queens |
| 132-04-BZ | 310 East Houston Street, Manhattan |
| 61-08-BZ | 439 86 th Street, Brooklyn |
| 89-10-BZ | 53 Mercer Street, Manhattan |
| 238-15-A thru 243-15-A | 102-04, 08, 12, 16, 20, 24 Dunton Court, Queens |
| 2017-144-A | 25-30 44 th Street, Queens |
| 2017-249-A | Major Deegan Expressway and S/O Van Cortland, Bronx |
| 2018-47-A | 45 Case Avenue, Staten Island |
| 2017-33-BZ | 398 Lenevar Avenue, Staten Island |
| 2018-42-BZ | 1360 36 th Street, Brooklyn |
| 1-96-BZ | 600 McDonald Avenue, Brooklyn |
| 56-02-BZ | 317 Dahill Road, Brooklyn |
| 268-14-BZ | 231-06/10 Northern Boulevard, Queens |
| 111-15-BZ | 98 Third Avenue, Brooklyn |
| 2016-4273-BZ | 669 Second Avenue, Manhattan |
| 2017-217-BZ | 4855 Hylan Boulevard, Staten Island |
| 2017-247-BZ | 1367 East 24 th Street, Brooklyn |
| 2017-288-BZ | 17-10 Whitestone Expressway, Queens |
| 2017-295-BZ | 128 West 26 th Street, Manhattan |

Afternoon Calendar117

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2017-231-BZ | 765 Pennsylvania Avenue, Brooklyn |
| 2018-103-BZ | 936 Avenue R, Brooklyn |
| 2018-106-BZ | 124 Hastings Street, Brooklyn |
| 2018-120-BZ | 550 West 41 st Street, Manhattan |

DOCKETS

New Case Filed Up to February 5, 2019

2019-23-BZ

290 Mulberry Street, Block 00590, Lot(s) 19 & 20, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Martial Arts Family Studio) on portions of the cellar and first floor of an existing 11 story and cellar mixed use residential and commercial building contrary to ZR §32-10. C6-3 district.

2019-24-BZ

2721 Nostrand Avenue, Block 7666, Lot(s) 0020, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district. R4/C2-2 district.

2019-25-BZ

40-48 Commercial Street, Block 2482, Lot(s) 1,4, and 6, Borough of **Brooklyn, Community Board: 1**. Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8. M1-2/R6 district.

2019-26-BZ

233 Nevins Street, Block 00412, Lot(s) 0006, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Cliffs at Gowanus) a portion of the first floor, and on the second, third, and fourth floors contrary to ZR 42-10. M1-2 zoning district. M1-2 district.

2019-27-BZ

4533 18th Avenue, Block 5439, Lot(s) 0020, Borough of **Brooklyn, Community Board: 12**. Variance (72-21) to permit the development of a house of worship (UG 4) (Congregation P'nei Menachem) contrary to ZR 24-35 (minimum required side yards) and ZR 25-31 (parking). R5 zoning district. R5 district.

2019-28-BZ

485 Kings Highway, Block 6658, Lot(s) 0048, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Orangetheory Fitness) on the first floor of an existing two-story commercial building contrary to ZR 32-10. C2-4/R6A Special Ocean Parkway District. R6A/C2-4 district.

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

CALENDAR

REGULAR MEETING FEBRUARY 26, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 26, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

1059-84-BZ

APPLICANT – Kennedys CMK LLP, for BMS Realty Co., LLC, owner; Hewlett Bay Park, lessee.
SUBJECT – Application July 5, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) to permit changes to the interior partitions and layout. C4-2/C9-2 (Special Ocean Parkway District).
PREMISES AFFECTED – 943/61 Kings Highway aka 2032 Coney Island Avenue, Block 6666, Lot 18 Borough of Brooklyn.

COMMUNITY BOARD #15BK

337-98-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 312 Flatbush LLC, owner; Crunch LLC, lessee.
SUBJECT – Application September 5, 2017 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on September 11, 2013; Extension of Term which expires on November 23, 2019; Waiver of the Rules. C2-4/R7A zoning district.
PREMISES AFFECTED – 324-334 Flatbush Avenue, Block 1057, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NG Kingswood Center, LLC, owner; TSI Midwood LLC dba New York Sports Club, lessee.
SUBJECT – Application February 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) on portions of the first and second floors of a three-story commercial building which expired on August 1, 2017; Waiver of the Board’s Rules. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, Block 6777, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2016-4141-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 30 Park Place Hotel LLC, owner; Four Seasons Hotel New York Downtown, lessee.

SUBJECT – Application July 27, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Four Seasons Hotel New York Downtown) on a portion of the first and third floors of a mixed-use hotel and residential building. The amendment seeks to permit the expansion of the use include an existing accessory fitness center, dance studio and pool on the third-floor level for a total of 18,980 square feet. C5-3 (LM) zoning district.

PREMISES AFFECTED – 27 Barclay Street, Block 123, Lot(s) 1101-1260, 3, 18, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

2017-263-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Westbroad Company, LLC, owner; Outfront Media, LLC, lessee.

SUBJECT – Application September 7, 2017 – Appeal from Department of Buildings determination that advertising sign is not entitled to continuing non-conforming use status at current size due to a purported gap in evidence of continued use, ignoring the Department's own prior concession of continued use.

PREMISES AFFECTED – 62-66 West Broadway, Block 132, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

2018-147-A

APPLICANT – Alexander Levkovich, for Yusupov Edward, owner.

SUBJECT – Application September 7, 2018 – Proposed development of a two (2) family detached residence not fronting on a legally mapped street contrary to General City Law 36. R3 zoning district.

PREMISES AFFECTED – 3805 Beach 38th Street, Block 7044, Lot 539, Borough of Brooklyn.

COMMUNITY BOARD #13BK

CALENDAR

**REGULAR MEETING
FEBRUARY 26, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 26, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

2017-301-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Jeffrey Rosenblum, owner; Trapeze School New York LLC, lessee.

SUBJECT – Application November 16, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Trapeze School*) contrary to ZR §32-10. M1-3 zoning district.

PREMISES AFFECTED – 467 Marcy Avenue, Block 1720, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2018-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

2018-117-BZ

APPLICANT – Eric Palatnik, P.C., for Aron Ungar, owner.
SUBJECT – Application July 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two family, two-story home contrary to ZR §23-142 (floor area ratio) and ZR §23-461 (side yard requirements). R5 zoning district.

PREMISES AFFECTED – 2060 63rd Street, Block 5542, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #11BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 5, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application June 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a commercial bank (UG 6). The amendment seeks to permit a change in use from commercial bank to retail grocery store (UG 6); Extension of Term which expired on March 13, 2008; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an amendment of a variance, previously granted pursuant to ZR § 72-21, to permit an increase in the number of parking spaces provided at the site, the change in use of the building on the site from a Use Group 6C bank to a Use Group 6A convenience retail or service establishment or 6C retail or service establishment store and modify the term of the variance, which expired on March 13, 2008; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2019, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the northeastern corner of Baychester Avenue and Bussing Avenue, partially within an R4 zoning district and partially within an R4 (C1-2) zoning district, in the Bronx; and

WHEREAS, the site has approximately 105 feet of frontage along Baychester Avenue, 66 feet of frontage along Bussing Avenue, 7,426 sq. ft. of lot area and is occupied by a one-story building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 13, 1973, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a one-story building for use as a bank, contrary to applicable use regulations, for a term of 15 years, expiring March 13, 1988, on condition that all work substantially conform to the approved drawings; accessory parking be provided along the exterior perimeter of the driveway; all laws, rules and regulations be complied with; and substantial construction be completed within one year, by March 13, 1974; and

WHEREAS, on April 22, 1975, under the subject calendar number, the Board granted an application to amend the resolution on condition that the premises substantially conform to drawings of conditions as built submitted with the application on condition that other than as amended the resolution issued on March 13, 1973, be complied with in all respects; and

WHEREAS, on April 4, 1989, under the subject calendar number, the Board granted a ten (10) year extension of the term of the variance, expiring March 13, 1998, on condition that the ground cover along Bussing Avenue be restored and maintained and replaced when necessary; the landscaping be maintained and replaced when necessary; one (1) street tree be installed in accordance with approved plans and maintained and replaced when necessary; that the fence be repaired and maintained in good condition at all times; all signs conform with the C1 district regulations; that other than as amended the resolution be complied with in all respects; and that a new certificate of occupancy be obtained within one (1) year, by April 4, 1990; and

WHEREAS, on May 25, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure and extended the term of the variance for an additional ten (10) years, expiring March 13, 2008, on condition that all signs be maintained in accordance with BSA approved plan; the premises be maintained in substantial compliance with proposed drawings submitted with the application; that other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year, by May 25, 2000; and

MINUTES

WHEREAS, the previous term having expired, the applicant seeks the subject amendment to extend the term of the variance for ten (10) years, permit an increase in the number of parking spaces provided at the site from five to seven and permit a change in use in the building from a Use Group 6C bank to a Use Group 6A convenience retail or service establishment or 6C retail or service establishment; and

WHEREAS, the applicant submits that the proposed change in use in the building is due to the inability to identify a Use Group 6C or community facility tenant; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice of Procedure (the "Board's Rules"), of § 1-07.3(b)(3)(ii) of the Board's Rules to permit the filing of this application more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, the applicant submitted proof that the premises have been continuously occupied by Use Group 6 uses since 1973; and

WHEREAS, at hearing, the Board requested that the accessory off-street parking spaces at the site be locked and made accessible only to employees of the Use Group 6 establishment occupying the site, that the trash enclosure be moved to a room within the building and that lighting at the site be modified in order to reach a reading of zero lumens at the property lines of the subject site; and

WHEREAS, the applicant subsequently provided photos of a gate with a combination lock located at the Baychester Avenue frontage of the site and a chain linked fence with privacy slating, submitted revised plans indicating a refuse room at the interior of the building and submitted a modified light spread diagram and represented that the owner of the site is in the process of installing new LED light fixtures at the site; and

WHEREAS, based on the foregoing, the Board finds that the requested modifications to the variances are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives § 1-07.3(b)(3)(ii) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 13, 1973, as amended through May 25, 1999, so that, as amended, this portion of the resolution reads: "to grant an extension of the term of the variance for ten (10) years, expiring February 5, 2029; on condition that all work and site conditions shall conform to drawings filed with this application marked "Received January 16, 2019"-Two (2) sheets and "Received February 5, 2019"-Two (2) sheets; and *on further condition*:

THAT use of the building shall be limited to Use Group 6A convenience retail or service establishment or Use Group 6C retail or service establishment;

THAT a maximum of seven accessory off-street parking spaces shall be maintained at the site in a locked condition and exclusively for employee parking;

THAT the gates that access the read and side yards of the site shall be controlled by employees at all times;

THAT occupancy of the site by a drive-through convenience store shall not be permitted;

THAT signage shall be located on the exterior of the gate indicating that parking is restricted employee use only;

THAT lighting on the site shall not spread over the property line and reach zero lumens at each property line; and

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

THAT the above conditions shall appear on a revised certificate of occupancy;

THAT a revised certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 490-72-BZ") be obtained within one (1) year;

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

244-97-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Parkwood Realty Associates, LLC, owner; Crunch 83rd Street LLC, lessee.

SUBJECT – Application October 18, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (Crunch Fitness) which expires on November 4, 2018; Extension of Time to Obtain a Certificate of Occupancy which expired on September 25, 2008; Waiver of the Board's Rules. C2-5/R8B zoning district.

PREMISES AFFECTED – 158/62 West 83rd Street, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

MINUTES

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit, which expired on November 4, 2018; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the south side of West 83rd Street, between Amsterdam Avenue and Columbus Avenue, in an R8B (C2-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 58 feet of frontage, 116 feet of depth, approximately 6,586 square feet of lot area, and is occupied by a six- (6) story plus cellar mixed-use residential and commercial building; and

WHEREAS, the subject physical culture establishment ("PCE") is located within portions of the cellar (6,093 square feet), first floor (6,093 square feet) and second floor (6,093 square feet) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1960, when, under BSA Cal. No. 536-37-BZ, the Board granted a variance to permit, in a business and residence use, B area district, the construction of a second floor extension into the residence use portion of the plot that exceeded the permitted area coverage and without the required rear yard, and extension of present commercial use, on condition that the work be done in accordance with plans filed with the application; all laws, rules and regulations applicable be complied with; all permits required and a certificate of occupancy be obtained and all work completed within one (1) year, by May 3, 1960; and

WHEREAS, on November 4, 1998, under the subject calendar number and BSA Cal. No. 243-97-BZ1, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE in the cellar and first floor of a two- (2) story plus cellar commercial building located at 158 West 83rd Street, and in the cellar and first floor of a four- (4) story plus cellar commercial building located at 150 West 83rd Street, on condition that all work substantially

conform to plans, as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; fire prevention measures be maintained in accordance with the BSA-approved plans; the special permit be limited to a term of ten (10) years, to expire on November 4, 2008; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings ("DOB") for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one (1) year of this grant, by November 4, 1999; and

WHEREAS, on December 21, 1999, under the subject calendar number, the Board amended the resolution to permit the legalization of the expansion of the existing PCE onto the second floor of the subject premises, on condition that the premises remain graffiti free at all times; that all signs and canopies be maintained in accordance with the requirements of the Zoning Resolution and the Administrative Code of the City of New York; that the premises be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by December 21, 2000; and

WHEREAS, on September 25, 2007, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and granted an extension of the term of the special permit for a term of ten years from the expiration of the prior grant to expire on November 4, 2018, on condition that any and all work substantially conform to plans, as they apply to the objections, filed with the application there be no change in ownership or operating control of the PCE without prior approval from the Board; a certificate of occupancy be obtained within one (1) year, by September 25, 2008; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on October 23, 2012, under BSA Cal. No. 86-12-BZ, the Board granted a special permit, pursuant to ZR §§ 73-63 and 73-03, to permit the enlargement of an existing two- (2) story non-residential building containing PCE use, which created non-compliance with regards to floor area, contrary to ZR § 23-142, on condition that any and all work

1 At the time of the initial special permit grant, the PCE was located at two (2) distinct properties and, thus, was issued two (2) related approvals: BSA Cal. No. 243-97-BZ at 150 West 83rd St (Lot 54) and the subject calendar number at the subject site. The special permit granted under BSA Cal. No. 243-97-BZ expired on November 4, 2008, and was not subsequently renewed.

MINUTES

substantially conform to plans, as they apply to the objections, filed with the application; the bulk parameters of the proposed enlarged building be a total floor area of 27,291 square feet and a floor area ratio of 4.2, as illustrated on BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; substantial construction be completed within four (4) years, by October 23, 2016; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the previous term of the special having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there has been no change in ownership or operation and that the subject PCE continues to operate as “Crunch”; and the hours of operation continue to be 5:30 a.m. to 11:00 p.m. Monday through Thursday, 5:30 a.m. to 10:00 p.m. Friday, and 8:00 a.m. to 9:00 p.m. Sunday; and

WHEREAS, the applicant represents that an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—are maintained throughout the PCE space; and

WHEREAS, by letter dated February 4, 2019, the Fire Department issued a conditional letter of approval and stated that the Bureau’s Licensed Public Place of Assembly (“LPPA”) Unit performed an inspection on November 11, 2018, and issued violations for failure to maintain the fire alarm system; at the time of inspection, the fire alarm panel showed the system silenced; in addition, FDNY summonses (repeat) were issued for failure to provide records and certificates of fitness for the fire alarm and sprinkler system; the “letter of approval” submitted by the applicant for the fire alarm system covers only the residential portion of the building, but a review of Fire Department records shows that the fire alarm system for the PCE space was inspected and approved; in addition, the fire suppression systems (standpipe and sprinkler) were inspected and tested satisfactory to the Department standards; and that the Department has no objection to the Board rendering a decision on this application, as the Bureau of Fire Prevention will continue to inspect the premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of the term of the special permit is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 4, 1998, as amended through September 25, 2007, so that, as amended, this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on November 4, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received September 12, 2018’-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 4, 2028;

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

THAT the premises shall remain graffiti-free at all times;

THAT the operator shall cure any outstanding Fire Department violation orders;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 244-97-BZ”) shall be obtained within one (1) year, by February 5, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

MINUTES

176-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Marathon Parkway Associates, LLC, owner.

SUBJECT – Application April 3, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the erection of a cellar and two-story professional retail building which expires on May 2, 2020; Waiver of the Board’s Rules. C1-2/R3-1 and R2A zoning district.

PREMISES AFFECTED – 45-17 Marathon Parkway, Block 8226, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of the terms of a variance, previously granted by the Board, which will expire on May 2, 2020; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, and then to decision on February 5, 2019; and

WHEREAS, Community Board 11, Queens, recommends approval of this application for a term of ten (10) years; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Marathon Parkway, between Gaskell Road and Northern Boulevard, partially located within an R2A zoning district and partially located within an R3-1 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 71 feet of frontage along Marathon Parkway, 10,902 square feet of lot area and is occupied by a three-story Use Group 6 office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 2, 2000, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, on a site then located partially within an R3-2 (C1-2) zoning district, partially located within an R1-2 zoning district and partially within an R2 zoning district, the construction of a two-story plus cellar Use Group 6 building contrary to zoning regulations pertaining to use, accessory off-street parking spaces, minimum required side yards, minimum required rear yards and limitations on business entrances, show windows or signs, contrary to ZR §§ 22-10, 36-21, 33-25, 33-26 and 32-511,

on condition that all work substantially conform to drawings filed with the application; the hours of operation be from 8:00 a.m. to 9:00 p.m., Monday through Saturday, and 10:00 a.m. to 6:00 p.m., Sundays; no vehicles be parked on the sidewalk; the premises be kept clean and free of debris, in accordance with ZR § 32-15, the Use Group 6 uses occupying the site be limited to (1) those uses listed in Use Group 6A except eating and drinking establishments of any kind and food stores of any kind, (2) those uses listed in Use Group 6B except drive-in banks, docks of any kind, eating and drinking establishments of any kind and frozen food lockers, (3) no uses listed in Use Group 6D, E and F will occupy the site; any changes in the proposed use only be made after approval of the Board; all lighting be pointed away from residential uses; all gates be secured after closing; the premises remain graffiti free at all times; all fencing and landscaping be maintained in accordance with BSA-approved plans; the term of the variance be limited to 20 years, to expire May 2, 2020; trash only be collected during business hours; these conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with ZR § 72-23, that is, by May 2, 2004; and

WHEREAS, on March 18, 2003, under the subject calendar number, the Board granted an application to amend the variance eliminating the first floor to provide nine additional accessory off-street parking spaces for a total of 21 accessory off-street parking spaces at the site, adding floor area on the second and third floors, increasing the height of the building and changing its location on the subject lot on condition that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; these conditions and all prior Board conditions appear on the Certificate of Occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on August 10, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedure and granted an 18-month extension of time

MINUTES

to complete construction of the subject building, expiring February 10, 2005, on condition that all conditions from prior resolutions appear on the certificate of occupancy; the approve be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Building ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, in anticipation of the expiration of the term of the variance on May 2, 2020, the applicant seeks the subject relief, specifically a 20-year extension of the term of the variance; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2), to permit the filing of this application more than one (1) year before the expiration of the term; and

WHEREAS, the applicant states that no amendments are sought in this application, that the second and third floors of the building are occupied by Use Group 6 office space and that 21 accessory off-street parking spaces are maintained on the premises as approved in the 2003 amendment; and

WHEREAS, the applicant submits that the application has been filed early to facilitate mortgage financing; and

WHEREAS, at hearing, the Board observed that the site is well-maintained, but inquired about the storage of trash, the compliance of signage at the site and requested additional details on the landscaping; and

WHEREAS, the applicant submitted revised plans showing the location of the trash enclosure and providing additional details regarding the trees planted at the site as well as a signage analysis demonstrating the presence of 46 square feet of non-illuminated accessory signage at the premises; and

WHEREAS, the applicant also provided photographs of the site to the Board at the hearing showing the condition of various trees on the site, which the applicant agreed to submit into the public record; and

WHEREAS, based on the foregoing, particularly the property owner's exceptional maintenance of the site, the Board finds that the requested 20-year extension of the term of the variance is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives § 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 2, 2000, as amended through August 10, 2004, so that as amended, this portion of the resolution reads: "to grant an extension of the term of the variance for a term of 20

years, expiring May 2, 2040, *on condition* that all site conditions shall comply with drawings filed under this application marked "Received January 15, 2019"--Seven (7) sheets; and *on further condition*:

THAT the existing lush landscaping installed to create a dense screen along the property lines along existing residential properties be maintained in good condition in accordance with BSA-approved plans;

THAT the hours of operation will be from 8:00 A.M. to 9:00 P.M. Monday through Saturday and 10:00 A.M. to 6:00 P.M. Sundays;

THAT no vehicles shall be parked on the sidewalk;

THAT the premises be kept clean and free of debris;

THAT in accordance with ZR § 32-15, the Use Group 6 uses which may occupy the site are limited to the following:

1. Those use listed in Use Group 6A except eating and drinking establishments of any kind and food stores of any kind;
2. Those uses listed in Use Group 6B except drive-in banks, docks of any kind, eating and drinking establishments of any kind and frozen food lockers;
3. No uses listed in Use Group 6D, E and F will occupy the site;

THAT any change in the proposed use only be made after approval of this Board;

THAT all lighting be pointed away from residential uses;

THAT all gates be secured after closing;

THAT any graffiti located on the premises shall be removed with 48 hours;

THAT all fencing be maintained in accordance with BSA-approved plans;

THAT the term of the variance shall be limited to 20 years, to expire May 2, 2040;

THAT trash only be collected during business hours;

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

THAT the above conditions shall appear on a revised certificate of occupancy;

THAT a revised certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 176-99-BZ") be obtained within one (1) year;

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

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

Adopted by the Board of Standards and Appeals,

MINUTES

February 5, 2019.

280-01-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application June 7, 2018 – Extension of Time to complete construction for a previously approved variance (§72-21) to permit a mixed-use building which expired on May 7, 2018. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue & 241-249 East 36th Street, Block 917, Lot(s) 21, 24-30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

156-03-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application November 8, 2018 – Extension of Time to commence construction of a previously granted Variance § (72-21) for the construction of a 16-story mixed-use commercial/community facility/ residential building contrary to the bulk regulations which expires on October 21, 2019. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a previously granted variance (BSA Cal. No. 156-03-BZ) and special permit (BSA Cal. No. 127-15-BZ), which will expire on October 27, 2019; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 159 feet of frontage along Northern Boulevard, a depth of 278 feet, 16 feet of frontage along Farrington Street (located approximately 151 feet north of the corner of Northern Boulevard and Farrington Street, former tax lot 38) and is occupied by a former movie theater, known as the RKO Keith's, with a ticket lobby and grand foyer designated as an interior landmark by the New York City Landmarks Preservation Commission ("LPC") in 1984; and

WHEREAS, the Board has exercised jurisdiction over this site since December 13, 2005, when, under BSA Cal. No. 156-03-BZ, the Board granted a variance to permit the development of a 200-unit, 17-story mixed-use commercial, community facility and residential building and 229 off-street accessory parking spaces contrary to zoning regulations relating to the maximum permitted residential floor area ratio, maximum permitted mixed-use floor area ratio minimum open space and minimum off-street accessory parking spaces on condition that all work substantially conform to the approved plans; a total of 229 attended parking spaces be provided in the accessory parking garage; prior to the issuance of any New York City Department of Buildings ("DOB") permit for any work on the site that would result in soil disturbance (such as demolition, site preparation, grading or excavation), the applicant or any successor would perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Restrictive Declaration to the satisfaction of the New York City Department of Environmental ("DEP") and submit a written report that must be approved by Protection DEP; no temporary or permanent certificate of occupancy be issued by DOB or accepted by the applicant or successor until DEP issues a Final Notice of Satisfaction or a Notice of No Objection indicating that the measures and conditions in the Restrictive Declaration have been completed to DEP's satisfaction; construction materials and windows providing at least 35 dBA of attenuation with alternate means of ventilation be used in order to maintain an interior noise level of 45 dBA; the applicant notify the New York City Department of Transportation ("DOT") six months prior to the opening of the building in order to investigate the feasibility of implementing traffic improvement measures; the applicant submit the following documents to the LPC for review and approval prior to any demolition, construction or development at the subject site: Construction Protection Plan for the interior landmark, an amended "Data Recovery" section of the Revised Mitigation Plan that shall read, "The scope of work for HABS documentation shall be submitted to

MINUTES

the LPC for review and approval prior to the demolition and the start of the documentation process,” a revised EAS stating that any written approvals by the LPC Preservation Department shall be included in the Final EAS; a copy of Certificate of Appropriateness 06-1202 for the subject property issued September 6, 2005, be included in the Final EAS, as well as a Scope-of-Work for HABS documentation; the Applicant submit the Scope-of-Work for HABS documentation to LPC for its review and approval prior to demolition and the start of the documentation process; and the bulk parameters of the proposed building be as follows: (1) a residential FAR of 5.64 (245,798 square feet of zoning floor area); (2) a total FAR of 7.5 (314,127 square feet of zoning floor area); (3) an open space ratio of 4.86 percent; (4) 17 stories; (5) a total building height of 164’-11” without bulkheads and 174’-11” with bulkheads; (6) street wall height of 41 feet; and (7) an actual height for flight path purposes of 194.9 feet, AMSL; and

WHEREAS, by letter dated May 29, 2009, under BSA Cal. No. 156-03-BZ, the Board permitted the following alterations to the plans as substantially compliant with the variance grant: (1) reduction of the building to 16 stories with average floor to floor heights of 10’-2”, rather than 9’-4”; (2) increase in the floorplate of the seventh through sixteenth floor to redistribute floor area from the eliminated seventeenth floor; (3) modifications to the size of certain units; and (4) inner court redesign; and

WHEREAS, on January 12, 2010, under BSA Cal. No. 156-03-BZ, the Board granted an extension of time to complete construction, which expired on December 13, 2009, pursuant to ZR § 72-23, extending such time by two years, expiring on January 12, 2012 on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on July 12, 2011, under BSA Cal. No. 156-03-BZ, the Board granted an amendment of the variance to permit modifications to the previously approved plans, specifically: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 square feet to 787 square feet; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a reduction in the residential floor area by 6,503 square feet (from 287,313 square feet to 280,810 square feet) and a corresponding increase in the commercial floor area by 6,503 square feet (from 10,957 square feet to 17,460 square feet) through the addition of a retail first floor mezzanine; (5) the relocation of the community facility space from the second floor to the third floor; (6) a reduction in the depth of the rear yard from 31’-5” to 30 feet; and (7) a reduction in the initial setback distance from 20 feet to 15 feet on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on January 31, 2012, under BSA Cal. No. 156-03-BZ, the Board granted a four year extension of time to complete construction due to funding delays on condition that substantial construction be completed by January 31, 2016, approval of the building by the FAA be in effect at the time of DOB permit issuance and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal. No. 156-03-BZ, the Board granted another four year extension of time to complete construction, expiring October 27, 2019, and an amendment to the variance, permitting the following changes to the previously approved plans: (1) an increase in the height of the proposed building by 11’-7” measured to the roof and 14’-3” measured to the top of the bulkhead, from 194.75 feet to 209 feet (AMSL, NAVD); (2) a reduction in the number of dwelling units in the proposed building from 357 to 269; (3) a change in the dwelling units from rentals to condominiums; and (4) redesign of the entry façade on Northern Boulevard on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal. No. 127-15-BZ, the Board additionally granted a special permit, pursuant to ZR §§ 73-66 and 73-03, to permit the height of the development at the site to exceed the maximum height limits around airports, contrary to ZR §§ 61-21 and 61-22 on condition that all work substantially conform to the approved plans; the maximum height of the building, including all appurtenances, be 209 feet AMSL (equivalent to NAVD-88) at FAA Building Points 2, 3, 6 and 7; and 200’-1” AMSL (equivalent to NAVD-88) at FAA Building Points 1, 4, 5 and 8; the building be marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4, 5 (Red), and 12; all construction at the site be as approved by DOB and comply with all relevant Building Code and zoning district regulations; the applicant comply with all FAA notification requirements associated with the construction at the site, including, without limitation, the filing of FAA Form 7460-2, Notice of Actual Construction or Alteration in the event that the project is abandoned as well as at least ten (10) days prior to the start of construction and within five (5) days after construction reaches its greatest height; and substantial construction be completed within four years, by October 29, 2019, pursuant to ZR § 73-70; and

WHEREAS, in anticipation of the expiration of the time to complete construction at the site pursuant to the previously granted variance and special permit, the applicant requests herein additional four-year extensions of time for both applications; and

WHEREAS, the applicant submits that construction at

MINUTES

the site has been stymied by two changes in ownership of the site subsequent to the grant of the variance in 2005 and to those owners' inability to secure financing for the project; that the applicant acquired the property in 2016, is a subsidiary of a large and publically traded real estate company, has the resources to complete construction within the next four years and that demolition work at the site is scheduled to commence in March 2019; and

WHEREAS, the applicant additionally states that they have continued to work closely with LPC and obtained a new Certificate of Appropriateness in order to accommodate required modifications to the preservation and restoration methods of the interior landmark, specifically, due to water damage, plasterwork can no longer be kept in place with a building constructed around it and now, such ornamental plasterwork and woodwork at the premises must be disassembled, restored off-site and re-installed onsite; and

WHEREAS, the Board notes that this is an extremely complex project with significant challenges, including the preservation of an interior landmark; and

WHEREAS, by letter dated February 1, 2019, the Fire Department states that an inspection was performed at the premises by the Bureau of Fire Prevention's Construction, Demolition & Abatement Unit ("CDA") and Fire Suppression Unit ("FSU"), which found that the standpipe system is out-of-services; accordingly, a violation order was issued to restore the standpipe system to either a wet system (as described in 2014 FC Section 905.12) or a dry system (as described in 2014 FC Section 1413 and Chapter 33 of the Building Code); and

WHEREAS, Fire Department, therefore, requests, that, should the Board grant this applications, the Board also institute a condition that the standpipe system be restored to operations order as either a wet or dry standpipe system forthwith and states that, in the event of noncompliance with either the violation order or the Board's variance or special permit, the Bureau of Fire Prevention will request a compliance hearing and rescission of the previous approvals; and

WHEREAS, based on its review of the record, the Board finds that a four (4) year extension of time to complete construction pursuant to the variance previously granted under BSA Cal. No. 156-03-BZ and the special permit granted under BSA Cal. No. 127-15-BZ is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution dated December 13, 2005, as amended through October 27, 2015, under BSA Cal. No. 156-03-BZ; and *reopens* and *amends* the resolution dated October 27, 2015, under BSA Cal. No. 127-15-BZ, so that, as herein amended, this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to October 27, 2023; and *on further*

condition:

THAT substantial construction shall be completed by October 27, 2023, as evidenced by an inspection and determination by the Department of Buildings;

THAT prior to the start of demolition work at the premises, the applicant shall provide necessary access to and obtain all necessary sign-offs from the Fire Department, including sign-off for the installation/restoration of an appropriate wet or dry standpipe system;

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

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a House of Worship (*Congregation Tefiloh Ledovid*) UG 3) contrary to underlying bulk requirements which expired on March 12, 2017; Waiver of the Board's Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:5
THE RESOLUTION –

WHEREAS, the determination of the Borough Commissioner, acting on Department of Buildings ("DOB") Job No. 302159571, issued on July 16, 2018, states in relevant part:

Proposed modifications to the Premises is contrary to the BSA approval and amendments under BSA Cal. No. 141-06-BZ; and

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an amendment to a variance, previously granted by the Board, and an

MINUTES

extension to time to complete construction pursuant to the same, which expired on May 12, 2017; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with continued hearings on October 23, 2018, December 12, 2018, and February 5, 2019, and then to decision on February 5, 2019; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application on condition that there be no catering hall on the premises, no usage of the roof except for the holiday of Sukkot and construction be completed within eight to twelve months; and

WHEREAS, the Board was also in receipt of seven letters and live testimony from several neighbors, many appearing on behalf of Neighbors for the Preservation and Development of Brooklyn Southwest, in opposition to this application, citing concerns regarding the failure to adequately and safely maintain the site, the demolition of a building on the site without first obtaining required permits, discrepancies between construction at the site and Board's previously approved plans, that the subject building will be utilized for commercial catering purposes contrary to applicable use regulations and the status of the applicant as a non-profit religious institution with the membership numbers advanced by the applicant in their justification for the size of the proposed development; and

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

WHEREAS, the subject site is located on the southeastern corner of 60th Street and 21st Avenue, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 27 feet of frontage along 60th Street, 100 feet of frontage along 21st Avenue and 2,700 square feet of lot area; and

WHEREAS, this application is filed on behalf of "Congregation Tefiloh Ledovid," described in the application as "a religious based not-for-profit institution"; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 2007, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, permitting the construction of a three-story plus cellar Use Group 4 synagogue that does not comply with zoning regulations pertaining to floor area, floor area ratio ("FAR"), lot coverage, front yards, side yards and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-31, on condition that all work substantially conform to drawings as they apply to the objections noted filed with the application; any change in control or ownership of the building shall require prior approval of the Board; the building parameters be a floor area of 7,008 square feet (2.59 FAR), three stories, a street

wall height of 33'-6", lot coverage of 86.5 percent, one front yard of 5'-6" on 60th Street and one side yard of 8 feet on the rear/southwest lot line; the use be limited to a house of worship (Use Group 4) and any classes be accessory to this use; the use of the cellar kitchen be limited to warming; no commercial catering take place onsite; the site, during construction and under regular operation, be maintained safe and free of debris; garbage be stored inside the building except when in the designated area for pick-up; use of the rooftop be limited to the Jewish holiday of Succoth and then only between the hours of 7:00 a.m. and 8:00 p.m.; any and all lighting be directed downward and away from adjacent residences; an acoustic baffle enclosure be constructed around the rooftop mechanicals; these conditions be listed on the certificate of occupancy; no building permit be issued until all Environmental Control Board ("ECB") and DOB violations have been cured; rooftop mechanicals comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by DOB; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and that DOB ensures compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, by letter dated October 3, 2008, the Board approved minor changes—including relocation of the interior stairways, interior partitions and changes to the façade—as substantially compliant with the plans approved in the 2007 variance grant on condition that DOB ensure compliance with all applicable provisions of the Zoning Resolution, Building Code or other relevant law; and

WHEREAS, on March 12, 2013, under the subject calendar number, the Board approved an application for a four (4) year extension of time to complete construction pursuant to the 2007 variance grant, expiring March 12, 2017, on condition that the property owner provides a contact number and contact person to the neighbors; all DOB violations be resolved prior to the reissuance of the permit and resumption of construction; the site be maintained free of debris; the security of the site be maintained; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and that DOB ensures compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant law under its jurisdiction irrespective of plan(s)

MINUTES

and/or configuration(s) not related to the relief granted; and

WHEREAS, by letter dated February 10, 2014, the Board approved additional changes—including the relocation of the warming kitchen, the relocation of restrooms, relocation and addition of sinks and the inclusion of a note (“deep storage tanks under cellar floor level”) on the cellar plan—as substantially compliant with the previously approved plans on condition that DOB ensure compliance with all applicable provisions of the Zoning Resolution, Building Code or any other relevant law; and

WHEREAS, the time to complete construction pursuant to the last extension of time granted in 2013 having expired and construction at the site still in progress, the applicant seeks the subject relief; and

WHEREAS, in addition, the applicant seeks a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(c)(2) of the Board’s Rules to permit the filing of this application less than two (2) years after the expiration of the time to complete construction; and

WHEREAS, the applicant also requests an amendment to the reflect deviations from the previously approved plans and legalize some of the as-built conditions of the building, including the elimination of a dining area and warming kitchen and expansion of two mikvehs in the cellar; addition of a laundry room and bath/preparation rooms, also in the cellar; alterations to interior partitions on the first floor; addition of a rabbi’s study and alterations to interior partitions on the second floor; the replacement of a rabbi’s office, study and library on the third floor with a rabbi’s apartment; the elimination of occupancy on the roof; and an increase in the street wall height to from 33’-6” to 35’-6”;

and

WHEREAS, at hearing, the applicant’s representative stated that dining services are no longer proposed at the premises, hence, the warming kitchen previously proposed in the cellar has been removed and converted, along with the dining area space, into a women’s mikveh, related bathrooms and preparation spaces; and

WHEREAS, in response to the Board’s inquiries regarding the expansion of the mikvehs proposed in the cellar, the consultant engaged to provide a programmatic needs analysis stated at hearing that feeding congregants after services is not as high a priority for the subject congregation as the provision of an appropriately sized mikveh area, which male congregants would use daily and female congregants would use on a less frequent but nevertheless regular basis; and

WHEREAS, the applicant’s representative averred that the mikvehs located in the cellar would not be put to commercial use, are a programmatic requirement for the subject synagogue and are intended to be used accessory to the primary synagogue use, consistent with a synagogue’s

classification as a community facility; and

WHEREAS, at hearing, neighbors provided testimony that the applicant filed a Post Approval Amendment at DOB omitting the restriction regarding the use of the rooftop contained as a condition of the 2007 variance grant and changed the rated occupancy of the roof to “general assembly,” permitting the occupancy of the roof 365 days a year; and

WHEREAS, in support of that contention, the Board was provided with a copy of the Schedule A filed at DOB under Job No. 302159571 for the subject block and lot on May 12, 2006, (Doc. No. 01) indicating the conditions of the 2007 variance grant in an area labeled “C of O comments” and a copy of the Schedule A filed at DOB as Doc. No. 08 under the same Job No. on March 24, 2017, indicating changes at the third floor—to wit, the deletion of the following note: “NOTE CONTINUED: THE USE OF THE ROOFTOP SHALL BE LIMITED TO THE JEWISH HOLIDAY OF SUCCOTH & THEN ONLY BETWEEN THE HOURS OF 7:00 A.M. & 8:00 P.M.; AND ALL LIGHTING SHALL BE DIRECTED DOWNWARD & AWAY FROM ADJACENT RESIDENCES, ANACOUSTIC [*sic*] BAFFLE ENCLOSURE SHALL BE CONSTRUCTION AROUND THE ROOFTOP MH.”—and at the roof—specifically, a change in its permitted occupancy, previously left blank, to “OUTDOOR ASSEMBLY SPACE, HVAC UNITS”; and

WHEREAS, the applicant submitted materials demonstrating that construction at the site was approximately 80 percent complete and such work included an elevator bulkhead on the roof sufficient to accommodate an elevator stop on the roof; and

WHEREAS, the Board requested that the elevator stop on the roof be eliminated and, in response to the applicant’s argument that such demolition constituted a financial hardship, the Board noted that the as-built conditions of the site do not reflect plans previously approved by the Board and that such construction was completed at the owner’s risk that such construction would not be subsequently approved by the Board; and

WHEREAS, the applicant provided photos showing the demolition of the elevator bulkhead at the site and a copy of the Alteration Type 2 permit issued by DOB (No. 321076857-01-EW-OT) on November 14, 2018, for its removal; and

WHEREAS, the Board inquired as to the large size of the rabbi’s apartment proposed on the third floor and, at hearing, the applicant’s programmatic needs consultant stated that the apartment is to be occupied by the rabbi of the synagogue and his wife and that they routinely host between 15 and 30 relatives, including children and grandchildren, for meals and other events; and

WHEREAS, in response to the Board’s questions

MINUTES

regarding the necessity of a rabbi's office and study, together 347 square feet of floor area, on the second floor when a generously sized rabbi's apartment was proposed on the third floor and the addition of such space reduced the size of the women's prayer area so that it would accommodate only 77 women, a size insufficient for the congregation, which, the applicant represents, has grown from 100 individuals at the time of the original variance grant to 100 families today, the applicant's representative stated at hearing that the rabbi is very popular and requires a space separate from his personal residence to provide advice to those who seek his counsel; and

WHEREAS, the applicant also subsequently amended the second floor plan to eliminate the rabbi's office and enlarge the women's prayer area to a capacity for 120 women; and

WHEREAS, in response to concerns raised by neighbors at public hearing regarding privacy and the presence of a balcony at the rear of the building at a height higher than surrounding residences, the applicant explained that the purpose of the balcony was to enable the rabbi's family to eat in an area open to the sky and revised the plans to reflect a 6 foot railing with evergreen hedge slats for privacy at the rear balcony of the subject building; and

WHEREAS, in a letter submitted into the public record for this application and reviewed by the Board, Neighbors for the Preservation and Development of Brooklyn Southwest, Inc., suggested that a congregation for the subject building does not exist based on community member's observations of locations purported to be the congregation's temporary meeting space and that the congregation is not listed as an active corporation with the New York State Department of State; accordingly, the Board requested additional information regarding the applicant-organization's status; and

WHEREAS, this status is relevant because the variance was granted pursuant to the applicant's status as a non-profit religious institution entitled to significant deference under the law of the State of New York as to zoning, which enabled the synagogue to rely on its programmatic needs, rather than the unique physical conditions of the lot, in support of the variance application (see, e.g., Westchester Reform Temple v. Brown, 22 NY2d 488 (1968)); and

WHEREAS, in response, the applicant provided a letter from a Certified Public Accountant stating that "Congregation Tefilo Ledovid [. . .] is a church-based tax exempt 501(c)(3) non-profit organization"; New York State Department of Taxation and Finance Form ST-119 (Exempt Organization Certificate) Certificate Number EX 241915 issued to "Congregation Tefilo Lodovid" on December 21, 2006; and a letter from the Internal Revenue Service, dated January 14, 1998, stating that "Congregation Tefilo

Ledovid" is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3); and

WHEREAS, the applicant's representative additionally provided a copy of a lease wherein "Congregation Tefillah L'Dovid" was the tenant of a premises located at 1917 61st Street, Brooklyn, for use solely as a synagogue or Rabbinical House commencing October 15, 2012, to demonstrate that the congregation did have a temporary worship space; copies of rent checks to show that the congregation was paying for the rental space, and photographs purported to have been taken of services held at 1971 61st Street, Brooklyn; and

WHEREAS, by letter dated December 7, 2018, the Fire Department stated that it took exception to the proposed application because access to the roof had not been provided and requested access for the performance of inspections and maintenance of condenser units; and

WHEREAS, in response, the applicant submitted revised plans showing a scuttle and ladder to the roof and including notes that the building will be sprinklered throughout and be equipped with a Fire Department connection, accordingly, Fire Department stated at hearing that it no longer had any objections; and

WHEREAS, with regards to the delays in construction at the site, the applicant states that construction delays were caused by the organization's financial hardship, which prevented any construction on the site for much of 2011 through July 2012, and anticipates that construction will be completed within six to 12 months of the Board's approval and a certificate of occupancy could be obtained within either to 12 months thereafter; and

WHEREAS, based on the foregoing, the Board finds that the requested amendment does not disturb the Board's findings made for the original variance and determines that the request to amend the variance and extend the time to complete construction is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives § 1-07.3(c)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated June 19, 2007, as amended through March 12, 2013, so that, as amended, this portion of the resolution reads: "to grant a two (2) year extension of time to complete construction, expiring February 5, 2021, *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received January 15, 2019' – Eight (8) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum of 6,727 square feet of floor area (2.49 FAR); a maximum of three stories; a maximum street wall height of 35'-6"; a maximum lot coverage of 86.5 percent; one front yard with a minimum depth of 5'-6"

MINUTES

on 60th Street and one side yard with a minimum depth of 8 feet on the rear/southwest lot line, as indicated on the Board-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and any classes shall be accessory to this use;

THAT the building shall be fully sprinklered and equipped with a Fire Department connection;

THAT the exterior finish of the building shall be brick veneer, as indicated on the Board-approved plans, and no use of exterior insulation finishing system ("EIFS") as an exterior finish shall be permitted;

THAT all synagogue windows shall have a minimum STC-50 rating and all windows facing adjacent properties shall be translucent;

THAT no commercial catering or commercial banquet use shall be permitted at the site or within the subject building;

THAT no commercial spa use may be permitted on the site and the mikvehs shall be utilized by congregants and their guests only;

THAT, during construction and under regular operation, the site shall be maintained safe and free of debris;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT no occupancy of the roof shall be permitted and the only means of access shall be through a scuttle and ladder, as indicated on the Board-approved plans, utilized for maintenance purposes only;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT an acoustic baffle enclosure shall be constructed around the rooftop mechanicals;

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

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

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 141-06-BZ") shall be obtained within four (4) years, by February 5, 2023;

THAT no building permit shall be issued until all ECB and DOB violations have been cured;

THAT rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

127-15-BZ

APPLICANT – Goldman Harris LLC, for Xin Development Group International, Inc., owner.

SUBJECT – Application November 8, 2018 – Extension of Time to commence construction of a previously approved Special Permit (§73-66) permitting construction of building more than the height limits established pursuant Z.R. §§61-211 & 61-22 which expires on October 27, 2019. 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, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a previously granted variance (BSA Cal. No. 156-03-BZ) and special permit (BSA Cal. No. 127-15-BZ), which will expire on October 27, 2019; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 159 feet of frontage along Northern Boulevard, a depth of 278 feet, 16 feet of frontage along Farrington Street (located approximately 151 feet north of the corner of Northern Boulevard and Farrington Street, former tax lot 38) and is

MINUTES

occupied by a former movie theater, known as the RKO Keith's, with a ticket lobby and grand foyer designated as an interior landmark by the New York City Landmarks Preservation Commission ("LPC") in 1984; and

WHEREAS, the Board has exercised jurisdiction over this site since December 13, 2005, when, under BSA Cal. No. 156-03-BZ, the Board granted a variance to permit the development of a 200-unit, 17-story mixed-use commercial, community facility and residential building and 229 off-street accessory parking spaces contrary to zoning regulations relating to the maximum permitted residential floor area ratio, maximum permitted mixed-use floor area ratio minimum open space and minimum off-street accessory parking spaces on condition that all work substantially conform to the approved plans; a total of 229 attended parking spaces be provided in the accessory parking garage; prior to the issuance of any New York City Department of Buildings ("DOB") permit for any work on the site that would result in soil disturbance (such as demolition, site preparation, grading or excavation), the applicant or any successor would perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Restrictive Declaration to the satisfaction of the New York City Department of Environmental ("DEP") and submit a written report that must be approved by Protection DEP; no temporary or permanent certificate of occupancy be issued by DOB or accepted by the applicant or successor until DEP issues a Final Notice of Satisfaction or a Notice of No Objection indicating that the measures and conditions in the Restrictive Declaration have been completed to DEP's satisfaction; construction materials and windows providing at least 35 dBA of attenuation with alternate means of ventilation be used in order to maintain an interior noise level of 45 dBA; the applicant notify the New York City Department of Transportation ("DOT") six months prior to the opening of the building in order to investigate the feasibility of implementing traffic improvement measures; the applicant submit the following documents to the LPC for review and approval prior to any demolition, construction or development at the subject site: Construction Protection Plan for the interior landmark, an amended "Data Recovery" section of the Revised Mitigation Plan that shall read, "The scope of work for HABS documentation shall be submitted to the LPC for review and approval prior to the demolition and the start of the documentation process," a revised EAS stating that any written approvals by the LPC Preservation Department shall be included in the Final EAS; a copy of Certificate of Appropriateness 06-1202 for the subject property issued September 6, 2005, be included in the Final EAS, as well as a Scope-of-Work for HABS documentation; the Applicant submit the Scope-of-Work for HABS documentation to LPC for its review and approval prior to demolition and the start of the documentation process; and the

bulk parameters of the proposed building be as follows: (1) a residential FAR of 5.64 (245,798 square feet of zoning floor area); (2) a total FAR of 7.5 (314,127 square feet of zoning floor area); (3) an open space ratio of 4.86 percent; (4) 17 stories; (5) a total building height of 164'-11" without bulkheads and 174'-11" with bulkheads; (6) street wall height of 41 feet; and (7) an actual height for flight path purposes of 194.9 feet, AMSL; and

WHEREAS, by letter dated May 29, 2009, under BSA Cal. No. 156-03-BZ, the Board permitted the following alterations to the plans as substantially compliant with the variance grant: (1) reduction of the building to 16 stories with average floor to floor heights of 10'-2", rather than 9'-4"; (2) increase in the floorplate of the seventh through sixteenth floor to redistribute floor area from the eliminated seventeenth floor; (3) modifications to the size of certain units; and (4) inner court redesign; and

WHEREAS, on January 12, 2010, under BSA Cal. No. 156-03-BZ, the Board granted an extension of time to complete construction, which expired on December 13, 2009, pursuant to ZR § 72-23, extending such time by two years, expiring on January 12, 2012 on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on July 12, 2011, under BSA Cal. No. 156-03-BZ, the Board granted an amendment of the variance to permit modifications to the previously approved plans, specifically: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 square feet to 787 square feet; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a reduction in the residential floor area by 6,503 square feet (from 287,313 square feet to 280,810 square feet) and a corresponding increase in the commercial floor area by 6,503 square feet (from 10,957 square feet to 17,460 square feet) through the addition of a retail first floor mezzanine; (5) the relocation of the community facility space from the second floor to the third floor; (6) a reduction in the depth of the rear yard from 31'-5" to 30 feet; and (7) a reduction in the initial setback distance from 20 feet to 15 feet on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on January 31, 2012, under BSA Cal. No. 156-03-BZ, the Board granted a four year extension of time to complete construction due to funding delays on condition that substantial construction be completed by January 31, 2016, approval of the building by the FAA be in effect at the time of DOB permit issuance and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal. No. 156-03-BZ, the Board granted another four year extension of

MINUTES

time to complete construction, expiring October 27, 2019, and an amendment to the variance, permitting the following changes to the previously approved plans: (1) an increase in the height of the proposed building by 11'-7" measured to the roof and 14'-3" measured to the top of the bulkhead, from 194.75 feet to 209 feet (AMSL, NAVD); (2) a reduction in the number of dwelling units in the proposed building from 357 to 269; (3) a change in the dwelling units from rentals to condominiums; and (4) redesign of the entry façade on Northern Boulevard on condition that all work substantially conform to the approved plans and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on October 27, 2015, under BSA Cal. No. 127-15-BZ, the Board additionally granted a special permit, pursuant to ZR §§ 73-66 and 73-03, to permit the height of the development at the site to exceed the maximum height limits around airports, contrary to ZR §§ 61-21 and 61-22 on condition that all work substantially conform to the approved plans; the maximum height of the building, including all appurtenances, be 209 feet AMSL (equivalent to NAVD-88) at FAA Building Points 2, 3, 6 and 7; and 200'-1" AMSL (equivalent to NAVD-88) at FAA Building Points 1, 4, 5 and 8; the building be marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4, 5 (Red), and 12; all construction at the site be as approved by DOB and comply with all relevant Building Code and zoning district regulations; the applicant comply with all FAA notification requirements associated with the construction at the site, including, without limitation, the filing of FAA Form 7460-2, Notice of Actual Construction or Alteration in the event that the project is abandoned as well as at least ten (10) days prior to the start of construction and within five (5) days after construction reaches its greatest height; and substantial construction be completed within four years, by October 29, 2019, pursuant to ZR § 73-70; and

WHEREAS, in anticipation of the expiration of the time to complete construction at the site pursuant to the previously granted variance and special permit, the applicant requests herein additional four-year extensions of time for both applications; and

WHEREAS, the applicant submits that construction at the site has been stymied by two changes in ownership of the site subsequent to the grant of the variance in 2005 and to those owners' inability to secure financing for the project; that the applicant acquired the property in 2016, is a subsidiary of a large and publically traded real estate company, has the resources to complete construction within the next four years and that demolition work at the site is scheduled to commence in March 2019; and

WHEREAS, the applicant additionally states that they have continued to work closely with LPC and obtained a new

Certificate of Appropriateness in order to accommodate required modifications to the preservation and restoration methods of the interior landmark, specifically, due to water damage, plasterwork can no longer be kept in place with a building constructed around it and now, such ornamental plasterwork and woodwork at the premises must be disassembled, restored off-site and re-installed onsite; and

WHEREAS, the Board notes that this is an extremely complex project with significant challenges, including the preservation of an interior landmark; and

WHEREAS, by letter dated February 1, 2019, the Fire Department states that an inspection was performed at the premises by the Bureau of Fire Prevention's Construction, Demolition & Abatement Unit ("CDA") and Fire Suppression Unit ("FSU"), which found that the standpipe system is out-of-services; accordingly, a violation order was issued to restore the standpipe system to either a wet system (as described in 2014 FC Section 905.12) or a dry system (as described in 2014 FC Section 1413 and Chapter 33 of the Building Code); and

WHEREAS, Fire Department, therefore, requests, that, should the Board grant this applications, the Board also institute a condition that the standpipe system be restored to operations order as either a wet or dry standpipe system forthwith and states that, in the event of noncompliance with either the violation order or the Board's variance or special permit, the Bureau of Fire Prevention will request a compliance hearing and rescission of the previous approvals; and

WHEREAS, based on its review of the record, the Board finds that a four (4) year extension of time to complete construction pursuant to the variance previously granted under BSA Cal. No. 156-03-BZ and the special permit granted under BSA Cal. No. 127-15-BZ is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution dated December 13, 2005, as amended through October 27, 2015, under BSA Cal. No. 156-03-BZ; and *reopens* and *amends* the resolution dated October 27, 2015, under BSA Cal. No. 127-15-BZ, so that, as herein amended, this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to October 27, 2023; and *on further condition:*

THAT substantial construction shall be completed by October 27, 2023, as evidenced by an inspection and determination by the Department of Buildings;

THAT prior to the start of demolition work at the premises, the applicant shall provide necessary access to and obtain all necessary sign-offs from the Fire Department, including sign-off for the installation/restoration of an appropriate wet or dry standpipe system;

THAT all conditions from prior resolutions not

MINUTES

specifically waived by the Board remain in effect;

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

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

Adopted by the Board of Standards and Appeals, February 5, 2019.

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application December 30, 2016 – Extension of Term /amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for adjourned hearing

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a

Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

61-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 21, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (New York Sports Club) located on the second and third floors of a three-story commercial building, which expired on June 1, 2018; Waiver of the Board’s Rules. C4-2A zoning district and Special Bay Ridge District.

PREMISES AFFECTED – 439 86th Street, Block 6035, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

89-10-BZ

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

SUBJECT – Application February 5, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b) which expired on November 23, 2018. M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, Block 474,

MINUTES

Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

238-15-A thru 243-15-A

APPLICANT – Jeffrey Geary, for Ed Sze, owner.
SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing

2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.
SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.
PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2017-249-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.
SUBJECT – Application August 28, 2017 – An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district.
PREMISES AFFECTED – Major Deegan Expressway and S/O Van Cortland, Block 3269, Lot(s) 70/118, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.
SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 6, 2019, at 10 A.M., for postponed hearing.

ZONING CALENDAR

2017-33-BZ

APPLICANT – Philip L. Rampulla, for Dorothy Lasiello, owner.
SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a single family detached home contrary to ZR §23-142 (Minimum Yards), ZR §107-251 (Setback), ZR §107-42 (Lot Area and Lot Width) and ZR §107-462 (Side Yard). R3X zoning district. (South Richmond Special District) (Special Area LL) (Lower Density Growth Management Area).

PREMISES AFFECTED – 398 Lenevar Avenue, Block 6949, Lot 26, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 5, 2019.

2018-42-BZ

CEQR #18-BSA-113K

APPLICANT – Bryan Cave LLP, for Congregation Beis Shloime, owner; Bobover Yeshiva Bnei Zion, lessee.
SUBJECT – Application March 16, 2018 – Special Permit (§73-19) to allow for a Use Group 3 school use (*Bobover Yeshiva Bnei Zion*) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-283 (rear yard equivalent) and ZR §33-432 (height and setback regulations). C8-2 zoning district.

MINUTES

PREMISES AFFECTED – 1360 36th Street, Block 5301, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 24, 2018, acting on New Building Application No. 320911607, reads in pertinent part:

1. ZR 32-10 Proposed school use in UG3 is not permitted in a C8-2 district.
2. ZR 33-432 Proposed conditions violate applicable height and setback regulations.
3. ZR 33-283 Required rear yard equivalent not provided.; and

WHEREAS, this is an application under ZR §§ 73-19, 73-03 and 72-21 to permit, in a C8-2 zoning district, the development and operation of a school in a community-facility building that does not comply with zoning regulations for use, height and setback and rear yard equivalent, contrary to ZR §§ 32-10, 33-432 and 33-283; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with continued hearings on February 5, 2019, and then to decision on the same date; and

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

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

WHEREAS, residents of the surrounding area submitted testimony in support of and in opposition to this application, citing concerns with noise, refuse, school bus traffic, parking and blocked streets; and

WHEREAS, the subject site (Tax Lot 20) is located on the south side of 36th Street, between Old New Utrecht Road, Church Avenue and 37th Street, in a C8-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 133 feet of frontage along 36th Street, 69 feet of frontage along Old New Utrecht Road, 127 feet of frontage along Church Avenue, 136 feet of frontage along 37th Street, 59,707 square feet of lot area and is unimproved and currently used for school bus storage; and

WHEREAS, the subject site is part of a larger zoning

lot that consists of Tax Lot 20 and Tax Lot 1 and has approximately 59,707 square feet of lot area; and

WHEREAS, the applicant proposes to develop a nine-story, with cellar and sub-cellar, community-facility building with 167,041 square feet of floor area (2.80 FAR), front wall heights ranging from 128’-6” along 36th Street (corner lot portion) to 102’-11” along 37th Street (through lot portion) without setbacks and with no rear yard equivalent in the through lot portion of Tax Lot 20; and

WHEREAS, the applicant states that, at the subject site, school use is not permitted under ZR § 32-10; front wall heights may not exceed 60 feet under ZR § 33-432; setbacks of 15 feet along 36th Street and New Utrecht Avenue and of 20 feet along 37th Street and Church Avenue are required under ZR § 33-432; and a rear yard equivalent with a depth of 20 feet is required in the through lot portion of Tax Lot 20 under ZR § 33-283; and

WHEREAS, ZR § 73-19 provides:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding non-*Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *street* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

MINUTES

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a preliminary matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of “school” because it provides full-time day instruction and a course of study that meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, the applicant notes that instruction at the School is provided by competent teachers; that the School employs a protocol for interviewing and verifying the credentials of teacher candidates using criteria regarding the type and length of experience and other qualifications; that interviews generally require candidates to teach a model lesson to allow the School to assess their teaching skills and general classroom demeanor; that the School’s operations include frequent observations by the administration to ensure instructional quality; and that teachers undergo biyearly reviews as well as ongoing feedback and training opportunities in conjunction with these reviews; and

WHEREAS, the applicant notes that the School has operated for over 70 years within the City and administers State standardized tests to its students, thereby assuring that students in attendance receive an education that is substantially equivalent to instruction at the City’s public schools; and

WHEREAS, the applicant notes that the School teaches subjects in English and that textbooks are also written in English; and

WHEREAS, the applicant submits that the School’s curriculum for the first eight years includes science, arithmetic, reading, spelling, writing, English, geography, history, civics, hygiene, physical education and the State’s history and that the School’s curriculum beyond the first eight years includes English, civics, hygiene, physical training, history and the destructive effects of communism;

and

WHEREAS, the applicant notes that the School uses a full-time day program that is in session for approximately 220 days per year, from September through June, and that the School employs strict attendance policies with an emphasis on decorum and appropriate behavior; and

WHEREAS, further, the applicant submitted a copy of the School’s New York State Nonpublic School Comprehensive Information Report; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the school, within a district where the school is permitted as-of-right; and

WHEREAS, the applicant submitted a study of the School’s programmatic needs, demonstrating that, after years of maintaining multiple scattered locations throughout the area, the School must consolidate its operations into one building because of current inefficiencies, unnecessary costs and wasted instructional time; and

WHEREAS, the applicant represents that the School currently enrolls approximately 1,126 students with an average annual enrollment increases of approximately 3.75 percent, or 40 percent within 10 years, indicating that the School’s projected enrollment for the 2021–2022 school year will be approximately 1,307 students and will reach 1,697 students by 2028; and

WHEREAS, the applicant submits that the School will also employ approximately 277 faculty and staff; and

Whereas, based on the School’s programmatic needs, a total of 72 new classrooms are necessary to provide for the School’s increased enrollment and that a building of at least 215,000 square feet of floor area is necessary to accommodate these educational spaces; and

WHEREAS, the applicant submits that each division of the School must be located entirely on one floor because each academic division—consisting of two grades that are educationally and socially integrated with linked academic goals—operates as a sub-school within the umbrella of the larger school; and

WHEREAS, the applicant further notes that, as part of its core curriculum, the School’s programming requires the following gathering spaces: a student sanctuary, an auditorium, study halls and lunchrooms—each designed to accommodate its curricular purpose; and

WHEREAS, the applicant submits that the School also requires specialized spaces for academic support, science experiments, music instruction, art classes, computer science and physical fitness as well as a library; and

WHEREAS, accordingly, the applicant has demonstrated that its stated requirements related to size and

MINUTES

configuration are justified by its programmatic needs; and

WHEREAS, the applicant represents that the School has conducted an exhaustive search for potential expansion sites using the following criteria: location within walking distance of the community to be served by the School; sites that could accommodate at least 215,000 square feet of floor area as of right; adequate lot size to accommodate floor plates of approximately 23,000 square feet; adequate street frontage to provide windows for natural light to classrooms and to accommodate bus drop-offs and pickups; compatibility with adjacent uses; and avoidance of construction complications; and

WHEREAS, the applicant submitted evidence that the School has considered numerous sites in the surrounding area, including 4202 Fort Hamilton Parkway, which had insufficient floor area, inadequate floor plates and had potential for neighborhood conflict with its location along a residential street; and

WHEREAS, thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, ZR § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant notes that the subject site is adjacent to an R5 zoning district boundary line and that the entire site is within 400 feet of said R5 zoning district, and notes that school uses are permitted as-of-right in R5 zoning districts; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is adjacent to an R5 zoning district; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, ZR § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant notes that the proposed building has been designed for the School's use with double-pane windows, central air conditioning and construction materials that would provide sufficient window-wall attenuation so that the School will achieve sufficient separation from noise, traffic and any other adverse effects of the surrounding area; and

WHEREAS, the Board finds that the conditions surrounding the site and the proposed building's use will adequately separate the proposed school use from noise, traffic and other adverse effects of any of the uses within the

surrounding C8-2 zoning district; accordingly, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant submits that additional pedestrian trips generated by the School would not affect pedestrian levels of service at adjacent intersections and provided a study indicating that there would be no potential for conflict between the School and a nearby mini bus parking lot on the north side of 36th Street; and

WHEREAS, the applicant states that, because of its four street frontages, the subject site has approximately 465 linear feet of frontage, which allows the School adequate space for bus drop-offs and pickups; and

WHEREAS, the applicant notes that the School employs a well-tested operational plan for student dismissals—involving grouping students by bus inside of classrooms before exiting the school for bus loading in conjunction with a transportation bus coordinator tasked with facilitating drop-offs and pickups by communication with bus drivers and teachers with a wireless-communication device to ensure coordination in real time; and

WHEREAS, the applicant also performed a pedestrian safety assessment, including a review of both pedestrian crash data and existing pedestrian elements, which identifies no high-crash locations in the surrounding area but proposes potential improvements to existing pedestrian elements leading to and from the subject site; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated December 7, 2018, DOT states that the applicant shall provide a full curb extension on the northwest corner of Church Avenue and 37th Street, an enhanced crosswalk in the west leg and parking lane stripes on 37th Street between 13th Avenue and Old New Utrecht Road; that the applicant shall install the concrete curb extension on the northwest corner of Old New Utrecht Road and 37th Street in conjunction with the construction of the sidewalk on the west side of Church Avenue; that design of the curb extension shall pass AutoTURN analysis for Fire Department vehicles and follow DOT standards; that, prior to construction, design of the curb extension shall be approved by DOT School Safety and DOT Geometric Design; that the applicant shall upgrade all crosswalk markings at the intersection of 37th Street and Church Avenue, the intersection of Old New Utrecht Road and Church Avenue and the intersection of Old New Utrecht Road and 37th Street; that the applicant shall ensure parking lane stripes on 37th Street between 13th Avenue and Old

MINUTES

New Utrecht Road and shall be extended one block to the east to 14th Avenue; that the applicant shall enhance crossing in the west leg of 37th Street and Church Avenue subject to DOT Intersection Control Unit's studying the location for a stop control with the applicant following up by May 2019; that if the intersection does not meet federal warrants for a signal or all way stop control, the applicant shall file a request for an enhanced crosswalk; that if the enhanced crossing is approved, it shall be installed after the applicant completes construction of the sidewalk on the west side of Church Avenue between Old New Utrecht Road and 37th Street and the curb extension on the northwest corner of 37th Street and Church Avenue, which shall be eligible for DOT Intersection Control Unit evaluation after the School's opening; that unused curb cuts shall be closed in order to improve safety for student pedestrians along the School's proposed frontage (all existing curb cuts along the School's proposed frontage on the south side of 36th Street, west of Old New Utrecht Road, and an existing curb cut along the School's proposed frontage on the north side of 37th Street, approximately 130 feet west of Church Avenue); and that upon approval of this application and near the end of construction, the applicant shall notify DOT School Safety so that DOT can determine if additional traffic safety improvements or changes to parking regulations are necessary, including the placement of appropriate school warning signage and school loading zones to be sited according to DOT standards; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(d) are met; and

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not

interfere with any pending public improvement project; and

WHEREAS, consistent with ZR § 72-21, the applicant submits that the School's proposed building is necessary to accommodate the School's programmatic needs and, as discussed above, submitted a study of the School's programmatic needs demonstrating the following: the School must have all of its divisions located in one building; each of the School's divisions must be located entirely on one floor; and there must be sufficient gathering spaces for secular and religious programs; and

WHEREAS, for each floor and each space in an as-of-right development, the applicant analyzed and detailed the deleterious effects that the complying building form would have on the School's programmatic needs based on the school's educational mission and projected occupancy; and

WHEREAS, the applicant notes that an as-of-right development would not meet the School's programmatic needs because a complying building would contain inadequate floor plates as a result of required setbacks and the rear yard equivalent, which would intersperse the School's grades and divisions across floors while resulting in a taller building with inferior classroom and specialty spaces and wasted floor area; and

WHEREAS, the applicant also submits that, among other things, an as-of-right development would require a central bank of elevators and stairs that would result in inefficient floor layouts, irregular floorplates, the reduction of light and air and encroachment of stairways into the sanctuary space; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variances requested are necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, the applicant studied the surrounding area, noting that it is characterized by a vibrant mix of land uses (including commercial establishments, educational facilities, automotive uses, parking facilities and residences), building typologies, setbacks and heights; and

WHEREAS, the applicant submits that, as discussed above regarding the School's use, schools are permitted as

MINUTES

of right in zoning districts immediately surrounding the subject site and that there are also schools located on the blocks to the north and south of the subject site; and

WHEREAS, the applicant notes that the subject site is adjacent to and across from two multiple dwellings and that there is a six-story building without setbacks under construction in the vicinity, similar to the form of the proposed building; and

WHEREAS, the applicant submits that the proposed building reflects a building form that is consistent with the built environment of the surrounding area because the proposed height is as of right, an as-of-right development would be taller than the proposed building, and the location of the subject site along two wide streets and irregular intersection angles results in an ample open areas along the boundaries of the subject site; and

WHEREAS, the applicant notes that the proposed building has also been designed so that its shorter portion has been oriented along 37th Street, which is a narrow street, and the bulk of the portion of the building located in the rear yard equivalent has been concentrated along 36th Street, which is a wide street; and

WHEREAS, with respect to the built form of the proposed building, the applicant notes that the façade is primarily composed of brick with the base of the proposed building articulated with stone and precast trim and panels; and

WHEREAS, in response to community concerns, the applicant further notes that development of the School would result in improved pedestrian conditions around the site, including the installation of sidewalks and high-visibility crosswalks, and that the consolidation of the School's operations into a single building would streamline bus operations, thereby reducing bus traffic in the surrounding area from three locations to one location; and

WHEREAS, with respect to concerns about refuse, the applicant submits that the School's proposed building will provide areas for refrigerated trash storage space located within the interior of the building; and

Whereas, in response to questions from the Board at hearing regarding security and access to spaces within the proposed building, the applicant provided further explanation regarding the non-simultaneous use of spaces within the proposed building, demonstrating separation of the School's operations from any proposed non-simultaneous use as a house of worship; and

WHEREAS, the applicant notes that the School will operate with controlled key access for school staff at all doors beyond the reception and security area with every floor equipped with controlled access; that there will be a security guard and staff posted in the lobby during students' arrivals and departures; that every space solely dedicated to the School's use will be locked down and secured during

any non-simultaneous use for house of worship events, which would only ever take place outside of the School's daily operations; and

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

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA113K, dated January 7, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated May 16, 2018, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any

MINUTES

adverse impacts on architectural or archeological resources; and

WHEREAS, by letter dated September 24, 2018, the Department of Environmental Protection (“DEP”) states that it finds the August 2018 Remedial Action Plan and Construction Health and Safety Plan is acceptable with the following conditions: that proper handling, transportation and disposal of excavated materials from the site shall be conducted in accordance with applicable New York State Department of Environmental Conservation (“DEC”) regulations; that all known or found underground storage tanks shall be properly closed and removed in accordance with all applicable DEC regulations; that if dewatering into the City’s storm/sewer drains occurs during the proposed construction, a DEP Sewer Discharge Permit must be obtained prior to the start of any de-watering; that for all areas to be landscaped or covered with grass (not capped) a minimum of two feet of DEP-approved clean fill/top soil shall be imported from an approved facility/source and graded across all landscaped/grass covered areas of the site not capped with concrete/asphalt; that upon completion of the clean fill/top soil investigation activities, the applicant shall submit a detailed clean soil report to DEP for review and approval prior to importation and placement on-site; that the report shall include an executive summary, narrative of field activities, laboratory data and comparison of soil analytical results (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs); and, at the completion of the project, a professional engineer-certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements have been properly implemented (i.e., transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with DEC regulations and two feet of DEP-approved certified clean fill and top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.); and

WHEREAS, a revised Remedial Action Plan and Construction Health and Safety Plan were received on February 4, 2019, that addresses DEP’s conditions; and

WHEREAS, by letter dated November 1, 2018, the New York City Department of Environmental Protection states that, with respect to air quality, the proposed project would not result in any potential for significant adverse impacts and that, with respect to noise, in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window–wall noise attenuation of 28 dBA is required for the southern, western and eastern frontages of the proposed building and that an alternate means of ventilation is required and shall be incorporated into building design and construction; and

WHEREAS, by letter dated February 5, 2019, DOT

states that a detailed traffic analysis is not warranted following the CEQR Technical Manual Level 1 (trip generation) and Level 2 (trip assignment) Screening Assessment; that the screening assessment requires a pedestrian analysis at two sidewalks and four corners; that, based on DOT’s review of the EAS, supplemental information and pedestrian levels of service analysis, DOT has determined that the proposed development of the School would not result in any significant adverse pedestrian impacts but that, prior to the opening of the School, the following safety improvements shall be coordinated with DOT’s School Safety Unit: placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School’s arrival and dismissal hours; high-visibility crosswalks to be located at the south and west legs of Church Avenue and 36th Street, the west leg of Old New Utrecht Road and Church Avenue, the south leg of 36th Street and 13th Avenue and the north leg of 36th Street and Louisa Street; curb extension at the northwest corner of 37th Street and Church Avenue; enhanced crossing treatments at the west leg of 37th Street and Church Avenue; and lane striping 37th Street; proposed sidewalks along the west side of Church Avenue between 37th Street and Old New Utrecht Road; and proposed “No Standing 7:00 a.m. to 7:00 p.m. except Saturday” regulation along the south side of 36th Street along the boundary of the subject site, the west side of Old New Utrecht Road between 36th Street and Church Avenue, the west side of Church Avenue between 37th Street and Old New Utrecht Road and north side of 37th Street along the boundary of the subject site; and

WHEREAS, DOT further notes that the applicant has identified space in a commercial bus lot located at 110 5th Street, Brooklyn, to park buses when not in use and that the applicant shall ensure that buses are parked in an off-street facility when the lease of the identified site has expired; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19, 73-03 and 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended,

MINUTES

and makes each and every one of the required findings under ZR §§ 73-19, 73-03 and 72-21 to *permit*, in a C8-2 zoning district, the development and operation of a school in a community-facility building that does not comply with zoning regulations for use, height and setback and rear yard equivalent, contrary to ZR §§ 32-10, 33-432 and 33-283; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received November 13, 2018”-Twenty-Five (25) sheets; and *on further condition*:

That the bulk parameters of the building shall be as follows: maximum front wall heights ranging from 128’-6” along 36th Street (corner lot portion) to 102’-11” along 37th Street (through lot portion) without setbacks and with no rear yard equivalent in the through lot portion, as illustrated on the Board-approved drawings;

THAT the portions of the building indicated as non-simultaneous use spaces may also be used as a house of worship (Use Group 4) during the following hours and only when the School is closed: Sunday through Thursday, 7:00 p.m. to 11:00 p.m., and 4:00 p.m. on Friday through 7:00 a.m. on Sunday, as indicated on the Board-approved drawings;

THAT if any other as-of-right use in a use group other than Use Group 4 or in addition to Use Group 4, such use shall comply with all applicable parking and loading regulations;

THAT a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

THIS DECLARATION, made this day of , 2019, by Congregation Beis Shloime, a not-for-profit corporation, having an address at (“Declarant”) and Bobover Yeshiva B’nei Zion, a New York not-for-profit corporation having an office at 4206-10 15th Avenue, Brooklyn, NY 11219 (the “Applicant”).

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, County of Kings, being known and designated as Block 5301, Lot 20 on the Tax Map of the City of the New York and more particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Applicant is the lessee of the Premises pursuant to lease, dated June 27, 2016;

WHEREAS, the Premises is currently unimproved; and

WHEREAS, the Applicant currently utilizes the Premises for the off-street storage of nineteen (19) school buses; and

WHEREAS, the Applicant proposes to construct and operate a school on the Premises; and

WHEREAS, commencing on or about September 1, 2019, the Applicant will utilize the parking lot located at

Tax Block 990, Lot 16, County of Kings, for the off-street storage of its buses (the “Future Bus Lot”); and

WHEREAS, the Applicant has requested various approvals from the New York City Board of Standards and Appeals to construct a school building on the Premises, under BSA Cal. No. 2018-42-BZ; and

WHEREAS, the New York City Board of Standards and Appeals (the “Board”) requires the execution and recording of this Declaration in connection with the off-street storage of the Applicant’s buses.

NOW, THEREFORE, in consideration of the Board’s approvals, the Applicant and Declarant do hereby declare that the Applicant and Declarant and their successors and/or assigns shall be legally responsible for compliance with the following restriction:

1. In the event that the Premises and/or the Future Bus Lot are no longer available to Applicant for the off-street storage of its buses, Applicant shall utilize an alternate lot at which the parking and storage of its nineteen (19) buses, or the total number of buses utilized by the Applicant at such time, is permitted in accordance with the applicable provisions of the Zoning Resolution of the City of New York;
2. The Applicant shall at no time utilize on-street parking spaces for the storage of any of the buses serving the Premises;
3. This Declaration may not be modified, amended or terminated without the prior written consent of the New York City Board of Standards and Appeals;
4. The covenants set forth herein shall run with the Premises and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this Declaration may result in the revocation of approvals by the New York City Board of Standards and Appeals, which may result in the revocation of a certificate of occupancy;
6. This Declaration shall be recorded in the Office of City Register against the Premises and the reference number and title of this Declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued for any buildings located on the Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant and Applicant have made and executed this Declaration as of the date hereinabove written.;

MINUTES

THAT the following safety improvements shall be coordinated with the Department of Transportation's School Safety Unit prior to the opening of the School: placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and dismissal hours; high-visibility crosswalks to be located at the south and west legs of Church Avenue and 36th Street, the west leg of Old New Utrecht Road and Church Avenue, the south leg of 36th Street and 13th Avenue and the north leg of 36th Street and Louisa Street; curb extension at the northwest corner of 37th Street and Church Avenue; enhanced crossing treatments at the west leg of 37th Street and Church Avenue; and lane striping 37th Street; proposed sidewalks along the west side of Church Avenue between 37th Street and Old New Utrecht Road; and proposed "No Standing 7:00 a.m. to 7:00 p.m. except Saturday" regulation along the south side of 36th Street along the boundary of the subject site, the west side of Old New Utrecht Road between 36th Street and Church Avenue, the west side of Church Avenue between 37th Street and Old New Utrecht Road and the north side of 37th Street along the boundary of the subject site;

THAT with respect to noise, in order to attain an indoor noise level of 45 dBA within the building, a composite window-wall noise attenuation of 28 dBA is required for the southern, western and eastern frontages of the building, and an alternate means of ventilation is required and shall be incorporated into building design and construction;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2018-42-BZ"), shall be obtained within four (4) years, by February 5, 2023;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 5, 2019.

1-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3rd and 4th floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue "C", Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

56-02-BZ

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22, 122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for adjourned hearing.

MINUTES

111-15-BZ

APPLICANT – Eric Palatnik, P.C., for 98 Third Avenue Realty LLC c/o Bill Wolf Petroleum Corporation, owner.
SUBJECT – Application October 3, 2017 – Variance (§72-21) to permit a six-story mixed use building with ground floor commercial space and residential space on the upper floors a contrary to ZR section 42-00. M1-2 zoning district.
PREMISES AFFECTED – 98 Third Avenue, Block 388, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – Special Permit (§73-126) to permit a two-story with cellar ambulatory diagnostic or treatment health care facility (UG 4) contrary to ZR §22-14(A). R3X (Special South Richmond Development District) (Lower Density Growth Management Area).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block

7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M. for continued hearing.

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – Special Permit (§73-49) to permit roof top parking on a new four-story accessory parking garage serving a four-story office building contrary to ZR §44-11. M1-1 College Point Special District.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for adjourned hearing.

2017-295-BZ

APPLICANT – Law Office of Jay Goldstein, for 129 West 26th Street Development LLC, owner.

SUBJECT – Application November 6, 2017 – Variance (§72-21) to permit the development of a fourteen (14) story, 24,684.5 square foot (10 FAR), mixed-use, commercial ground floor and residential above, contrary to ZR 42-00. M1-6 zoning district.

PREMISES AFFECTED – 128 West 26th Street, Block 801, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 5, 2019
1:00 P.M.**

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

ZONING CALENDAR

2017-231-BZ

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

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2018-103-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jacqueline Mosseri and Alan Mosseri, owners.

SUBJECT – Application Jun2 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to ZR §23-47 (less than the required rear yard). R5 (Special Ocean Parkway) and R5 (Special Ocean Parkway Sub-district).

PREMISES AFFECTED – 936 Avenue R, Block 6685, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for postponed hearing.

2018-106-BZ

APPLICANT – Eric Palatnik, P.C., for Tatiana Markel, owner.

SUBJECT – Application July 3, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family residence to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 124 Hastings Street, Block 8750, Lot 336, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2018-120-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Silverstein MB LLC, owner; Silverstein MB LLC, lessee. SUBJECT – Application July 19, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (550 West 41st Gym) to be located within a proposed building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 550 West 41st Street, Block 1069, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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February 22, 2019

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| | |
|------------------------|--|
| 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

| | |
|---|-----|
| DOCKET | 120 |
| CALENDAR of March 5, 2019 | |
| Morning | 121 |
| Afternoon | 122 |
| SPECIAL HEARING of March 7, 2019 | |
| Morning | 122 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, February 12, 2019**

Morning Calendar123

Affecting Calendar Numbers:

| | |
|---------------------------|---|
| 103-70-BZ | 203 East 74 th Street, Manhattan |
| 40-80-BZ | 35-41 West 23 rd Street, 39-41 West 23 rd Street, 20-22 West 24 th Street, Manhattan |
| 429-29-BZ | 4801 Kings Highway, Brooklyn |
| 115-53-BZ | 252-02 Union Turnpike, Queens |
| 138-87-BZ | 218-36 Hillside Avenue, Queens |
| 26-02-BZ | 1680 Richmond Avneue a/k/a 3101 Victory Boulevard, Staten Island |
| 189-08-BZ | 232 Mercer Street, Manhattan |
| 150-14-BZ | 30 Broad Street, Manhattan |
| 2017-5-A thru 2017-7-A | 620A, 620B, 620C Sharrotts Road, Staten Island |
| 2017-59-A | 3857 Oceanview Avenue, Brooklyn |
| 2017-258-BZ | 6161 Broadway, Bronx |
| 2017-291-BZ | 1367 East 26 th Street, Brooklyn |
| 2017-292-BZ | 1363 East 26 th Street, Brooklyn |
| 2018-51-BZ | 11-01 Plainview Avenue, Queens |
| 2016-1208-BZ | 300 East 64 th Street, Manhattan |
| 2016-4240-BZ | 1231 Third Avenue, Manhattan |
| 2017-131-BZ | 77-85 Gerry Street, Brooklyn |
| 2017-244-BZ | 2208 Boller Avenue, Bronx |
| 2017-298-BZ | 14 White Street, Manhattan |
| 2017-309-BZ | 406 Remsen Avenue, Brooklyn |
| 2017-313-BZ | 853 Kent Avenue, Brooklyn |
| 2018-52-BZ | 159 Boerum Street, Brooklyn |
| 2018-55-BZ | 222 Johnson Avenue, Brooklyn |
| 2018-95-BZ | 120 Avenue M, Brooklyn |

Afternoon Calendar138

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-165-BZ | 25 Hudson Street, Manhattan |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 2018-58-BZ | 1182 Broadway, Manhattan |
| 2018-140-BZ | 100-03 North Conduit Avenue, Queens |
| 2018-155-BZ | 1123 East 27 th Street, Brooklyn |

Corrected Calendar142

Affecting Calendar Numbers:

| | |
|-----------|-------------------------------|
| 193-13-BZ | 4770 White Plains Road, Bronx |
|-----------|-------------------------------|

DOCKETS

New Case Filed Up to February 12, 2019

2019-29-BZ

30 Clinton Avenue, Block 1872, Lot(s) 44,48,49, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-19) to permit the operation of a school (UG 3) (International Charter School) contrary to ZR §42-10. M1-2 zoning district. M1-2 district.

2019-30-BZ

2705 East 28th Street, Block 8791, Lot(s) 120, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district. R4 district.

2019-31-BZ

525 West 26th Street, Block 00698, Lot(s) 0018, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (The Wright Fit Performance Lab) to be located on the fourth and fifth floors of a five-story building contrary to ZR §42-10. M1-5 Special West Chelsea zoning district. and West Chelsea Historic District. M1-5 district.

2019-32-BZ

801 Co-Op City Boulevard, Block 5141, Lot(s) 0280, Borough of **Bronx, Community Board: 10**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district. C4-1 district.

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

CALENDAR

**REGULAR MEETING
MARCH 5, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 5, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

218-58-BZ

APPLICANT – Nasir J. Khanzada, for Norman Dawson, owner.

SUBJECT – Application September 20, 2018 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on July 29, 2018; Amendment to permit the legalization of the addition of an accessory convenience store; Waiver of the Board’s Rules.

PREMISES AFFECTED – 77-40 Hewlett Street, Block 08555, Lot 60, Borough of Queens.

COMMUNITY BOARD #13Q

1016-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Opera Owner Inc., c/o Halstead Management Co., LLC, lessee.

SUBJECT – Application November 16, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (New York Sports Club) which expired on May 5, 2017; Amendment to permit a change in hours of operation and to reflect a new operator (Studio IX); Waiver of the Board’s Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

130-88-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) which expires on January 29, 2019. C2-2/R4 zoning district.

PREMISES AFFECTED – 3602 Snyder Avenue, Block 4907, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #17BK

132-92-BZ

APPLICANT – Willy C. Yuin, R.A., for Daniel Cassella, owner.

SUBJECT – Application October 2, 2017 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted day care use in the cellar of the subject premises in conjunction with a banquet hall use, which expired on February 9, 2017; Waiver of the Rules. R3X, CI-1 SRD zoning district.

PREMISES AFFECTED – 3948 Amboy Road, Block 5142, Lot 22, Borough of Staten Island.

COMMUNITY BOARD #3SI

149-97-BZ

APPLICANT – Francis R. Angelino, Esq., for Martin A. Gleason Funeral Home, LLC, owner.

SUBJECT – Application August 2, 2018 – Amendment of a previously approved Variance (§72-21) which permitted an accessory open parking lot (UG 7E) for use with a funeral establishment (UG 7B). The amendment seeks to reflect a reduction in the size of the zoning lot and number of parking spaces from 34 spaces to 29; Extension of Term which expired on August 11, 2018. R2A zoning district.

PREMISES AFFECTED – 150-19 11th Avenue, Block 4515, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

271-09-BZ

APPLICANT – Akerman LLP, for Syracuse Fund II LLC, owner; Jamaica Fitness Group, LLC, lessee.

SUBJECT – Application November 30, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building which is set to expire on January 17, 2019. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

CALENDAR

**REGULAR MEETING
MARCH 5, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 5, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-233-BZ

APPLICANT – Sheldon Lobel, P.C., for 446-448 Park Realty Corp., owner.

SUBJECT – Application August 8, 2017 – Variance (§72-21) to allow for the development of six-story plus cellar (UG 2) residential building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 446-448 Park Avenue, Block 1898, Lot(s) 37 & 38, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2019-33-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Project Rebuild Inc., owner.

SUBJECT – Application February 15, 2019 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required front yard (ZR 23-45) side yard (ZR 23-461, ZR 23-48). R4 zoning district.

PREMISES AFFECTED – 423 Beach 43 Street, Block 15965, Lot 108, Borough of Queens.

COMMUNITY BOARD #14Q

Carlo Costanza, Executive Director

**SPECIAL HEARING
MARCH 7, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, March 7, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

2018-166-A

APPLICANT – Queens Neighborhoods United/c/o Tania Mattos, for AA 304 GC LLC, owner.

SUBJECT – Application October 18, 2018 – Interpretative Appeal challenging the Department of Buildings permit issued for the development of a mixed-use building. Appeal of DOB permit that classifies the retail space occupied by Target as a UG 6 use.

PREMISES AFFECTED – 40-31 82nd Street aka 40-19 82nd Street, Block 1493, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 12, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

103-70-BZ

APPLICANT – Herrick Feinstein LLP, for 203 East 74 LLC, owner.

SUBJECT – Application July 24, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. C1-9/R8B zoning district.

PREMISES AFFECTED – 203 East 74th Street, Block 1429, Lot 103, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to reopen and amend a variance, previously granted by the Board, which permitted the erection of a ten- (10) story multiple dwelling that does not comply with the zoning requirements for rear yards and lot line windows; and

WHEREAS, the purpose of this application is to facilitate the transfer of 6,503 square feet of unused commercial development rights appurtenant to the subject site by the owner of the site to the owner of a development site (tentatively comprised of Block 1429, Lots 3, 4 and 44, the “Development Site”) to be incorporated into a mixed-used commercial and residential building; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, and then to decision on February 12, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, opposes this application on account of the height of the proposed development on the Development Site; and

WHEREAS, the Board was in receipt of 11 letters in support of, and 14 letters in opposition to, this application and

WHEREAS, this application is brought on behalf of 203 East 74 LLC, which owns the subject site and seeks the

Board’s authorization to merge the subject site with the Development Site; and

WHEREAS, the subject site is located on the north side of East 74th Street, between Third Avenue and Second Avenue, partially within a C1-9 zoning district and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 39 feet of frontage, 62 feet of depth, 4,965 square feet of lot area and is occupied by a seven- (7) story plus cellar and two (2) mezzanine mixed-use residential and commercial building containing 18,474 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 22, 1970, when, under the subject calendar number, the Board granted a variance to permit, in a then C1-9 zoning district, the erection of a ten- (10) story multiple dwelling that encroached on the required rear yard and with windows that encroached on the minimum distance to a lot line, on condition that the work conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by September 22, 1971 (the “Variance”); and

WHEREAS, on the same date, under BSA Cal. No. 104-70-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, of the decision of the Department of Buildings on condition that the building substantially conform to plans filed with BSA Cal. No. 103-70-BZ; the resolution adopted by the Board under BSA Cal. No. 103-70-BZ be complied with; and, all laws, rules and regulations applicable be complied with; and

WHEREAS, on November 16, 1971, under the subject calendar number, the Board reopened and amended the resolution to extend the time to complete construction for one (1) year, by November 16, 1972; and

WHEREAS, on March 28, 1972, under the subject calendar number, the Board amended the variance, granted on September 22, 1970, as amended through November 16, 1971, to permit the building to be redesigned, rearranged and constructed substantially as shown on plans filed with the application, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, the applicant additionally requests an amendment to reflect the existing building condition of seven (7) stories plus two (2) mezzanine levels, for a total of nine (9) stories, and 20 dwelling units; and

WHEREAS, the applicant states that the proposed transfer of development rights is consistent with the New York Court of Appeals’ decision in *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been previously granted; and

WHEREAS, the applicant represents that the transfer of the unused development rights from the subject site is not in conflict with the Variance; and

WHEREAS, the applicant notes that the Board made all of the findings required pursuant to ZR § 72-21 in the Resolution for the Variance (the “Resolution”), but that the

MINUTES

Resolution is silent as to whether the Board assigned any value to the unused development rights at the subject site; and

WHEREAS, accordingly, the applicant states that it can be assumed that the Board ascribed no value to the unused development rights and, in support of that assumption, submits a letter from a financial consultant analyzing the value of the unused development rights appurtenant to the subject site in 1970 and 1971 and concluding that the rights, indeed, had no value at that time because (1) due to the existence of a residential building on Lot 5 that is non-compliant with regards to floor area and residential buildings located on Lots 1, 2 and 3 subject to rent stabilization, the parcels surrounding the Property were unlikely to have purchased the unused development rights from the Property at the time of the variance or amendment and (2) all adjacent lots that might have provided opportunities for the transfer of unused development rights were held in separate ownership from the subject site; and

WHEREAS, finally, the applicant notes that the mechanism for enabling the transfer of development rights through zoning lot mergers was only added to the Zoning Resolution in 1977, when economic conditions in New York City were severely distressed, and it was not until the early- to mid-1980s that the economic climate stabilized to the point of becoming conducive to new real estate development, including developments incorporating the transfer of unused development rights; and

WHEREAS, the applicant also provided a copy of the financial evaluation submitted into the Board's records with regards to the Variance (stamped "Received," December 18, 1970) and the Board notes that this evaluation did not, in fact, ascribe any value to unutilized floor area; and

WHEREAS, therefore, the applicant states that an amendment to the variance to facilitate the transfer of the unused development rights from the subject site to the Development Site does not undermine the integrity of the Board's earlier findings with regards to ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in *Bella Vista*; and

WHEREAS, specifically, as stated above, the applicant submits that, at the time of the variance, the subject premises were held in separate and unrelated ownership from all other adjacent parcels on the subject block and that more than 45 years have elapsed since the grant of the Variance; and

WHEREAS, the Board notes that *Bella Vista* concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit the operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for the development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and

minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board credits the applicant's assertions that, unlike in *Bella Vista*, the subject site and Development Site have been under separate, unrelated ownership since the Variance and that, therefore, the applicant lacked control over the timing and nature of the development of the Development Site; and

WHEREAS, the Board also notes that a brief period elapsed between the issuance of the variance underlying the *Bella Vista* decision and the date of the permit application in which the owner proposed to use the floor area transferred from the variance site, further distinguishing that case from the instant application; and

WHEREAS, the Board acknowledges that in *Bella Vista*, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, whereas the subject Variance was issued more than 45 years ago; and

WHEREAS, the Board agrees that the differences in timing and the health of the respective real estate markets distinguish the *Bella Vista* case from the instance case and supports the conclusion that the use of the subject site's unused development rights was not foreseeable by the owner of the Development Site or the Board; and

WHEREAS, therefore, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings pursuant to ZR § 72-21, specifically the (b) and (e) findings, at the time that they were made; and

WHEREAS, with regards to a further amendment reflecting the as-built conditions of the building, the Board notes that the Variance permitted a ten- (10) story plus cellar building with a front wall height of 85 feet and that the existing condition plans provided by the applicant show a nine- (9) story plus cellar building with a front wall height of 81 feet and, thus, the building, as-built, is within the scope of the Variance and does not require additional relief with regards to rear yard depth or distance between windows and lot lines; and

WHEREAS, based upon its review of the record, the Board amends the variance to reflect the as-built condition of the site and does not object to the transfer of unused development rights from the subject site to the Development Site or to the proposed zoning lot merger with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, adopted on September 22, 1970, as amended through March 28, 1972, so that as amended this portion of the resolution shall read: "to permit the merger of the subject site with contiguous parcels on Block 1429, in Manhattan, and the associated modifications to the BSA-approved site plan; and; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked 'Received October 17, 2018'-One (1) sheet; and *on further condition*:

MINUTES

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdictions, including modifications to the buildings on the site;

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

THAT further changes to any site plan including the subject site may be subject to Board review and approval;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 103-70-BZ"), shall be obtained within one (1) year, by February 12, 2020;

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

40-80-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 39 West 23rd Street, LLC, owner.

SUBJECT – Application October 25, 2018 – Amendment of a previously variance (§72-21) to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development and approval of previously constructed rooftop additions totaling 754 square feet. M1-6 Ladies' Mile Historic District.

PREMISES AFFECTED – 35-41 West 23rd Street, 39-41 West 23rd Street, 20-22 West 24th Street, Block 825, Lot(s) 20, 60, 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to reopen and amend a variance, previously granted by the Board, which permitted, in a M1-6 zoning district, the conversion of all floors above the first floor from lofts into a multiple dwelling; and

WHEREAS, the purpose of this application is to reflect the as-built conditions of the site and facilitate the transfer of 19,765 square feet of development rights appurtenant to the subject site by the owner of the site to the owner of a development site (tentatively comprised of Block 825, Lots 20 and 60, the "Development Site") to be incorporated into a mixed-used commercial and residential building; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, and then to decision on February 12, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

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

WHEREAS, this application is brought on behalf of the 35 West 23rd Street Condominium Association, which owns the subject site and seeks the Board's authorization to merge the subject site with the Development Site; and

WHEREAS, the subject site is located on the north side of West 23rd Street, between Fifth Avenue and Avenue of the Americas, within an M1-6 zoning district and the Ladies' Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 45 feet of frontage, 99 feet of depth, 4,387 square feet of lot area and is occupied by a five- (5) story plus cellar and penthouse building containing 19,765 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 8, 1980, when, under the subject calendar number, the Board granted a variance to permit, in an existing five- (5) story building, the conversion of all floors above the first floor from lofts into a multiple dwelling, contrary to use regulations, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; a smoke detector with a self-contained alarm be installed in each apartment; the existing sprinkler system be permanently retained and properly maintained; a manual fire alarm station, connected to an alarm that can be heard throughout the building, be installed on each floor; 25 percent of the roof area be allocated as tenant recreational space; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within four (4) years, by July 8, 1984 (the "Variance"); and

WHEREAS, the applicant also seeks an amendment to the original variance to legalize the addition of a penthouse containing 754 square feet of floor area in excess of the Variance and prior enlargement of the zoning lot, which the applicant acknowledges should have been reviewed by the Board; and

WHEREAS, the applicant represents that the addition of 754 square feet does not alter the findings for the original 1980 variance; and

WHEREAS, the applicant additionally submits that a Declaration of Zoning Lot Restrictions, dated September 19, 2005, and recorded at CRFN 2006000018147, and a Zoning Lot Development and Easement Agreement, dated September 19, 2005, and recorded at CRFN 2006000018146 filed against the subject tax lot and adjacent tax lot 20, merging them into a single zoning lot to facilitate the transfer of approximately 24,000 square feet of excess development rights from the subject site to adjacent tax lot 20; and

WHEREAS, the applicant states that the proposed

MINUTES

transfer of development rights is and transfer of development rights in 2005 was consistent with the New York Court of Appeals' decision in *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been previously granted; and

WHEREAS, the applicant represents that the transfer of the unused development rights from the subject site is not in conflict with the Variance; and

WHEREAS, the applicant notes that the Board made all of the findings required pursuant to ZR § 72-21 in the Resolution for the Variance (the "Resolution"), but that the Resolution is silent as to whether the Board assigned any value to the unused development rights at the subject site; and

WHEREAS, accordingly, the applicant assumes that the Board ascribed no value to the unused development rights and, in support of that assumption, submits a letter from a financial consultant analyzing the value of the unused development rights near the subject site in 1979 and concluding that the rights, indeed, had no value at that time because the building was not suited for a conforming use due to the lack of a permissible live floor load, lack of an elevator, and its narrowness; and

WHEREAS, finally, the applicant notes that the mechanism for enabling the transfer of development rights through zoning lot mergers was only added to the Zoning Resolution in 1977 and, at the time, economic conditions in New York City were severely distressed, thus, development rights transfers in 1980 were highly unlikely in the zoning district; and

WHEREAS, therefore, the applicant states that an amendment to the variance to facilitate the transfer of the unused development rights from the subject site to the Development Site does not undermine the integrity of the Board's earlier findings with regards to ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in *Bella Vista*; and

WHEREAS, specifically, as stated above, the applicant submits that, at the time of the variance, the subject premises were held in separate and unrelated ownership from all other parcels on the subject block and that more than 35 years—25 years before the first merger and transfer of excess development rights in 2005—have elapsed since the grant of the Variance; and

WHEREAS, at hearing, the Board observed that the financials provided in association with the Variance revealed a surplus of vacant spaces in adjacent buildings and that such information served as additional proof that excess floor area at the subject site had little commercial value at the time of the Variance; and

WHEREAS, the Board notes that *Bella Vista* concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit the operation of a movie theater in a residential zoning district, to a separate adjacent site under common

ownership—for the development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board credits the applicant's assertions that, unlike in *Bella Vista*, the subject site and Development Site have been under separate, unrelated ownership since the Variance that that, therefore, the applicant lacked control over the timing and nature of the development of the Development Site; and

WHEREAS, the Board also notes that a brief period of time elapsed between the issuance of the variance underlying the *Bella Vista* decision and the date of the permit application in which the owner proposed to use the floor area transferred from the variance site, further distinguishing that case from the instant application; and

WHEREAS, the Board acknowledges that in *Bella Vista*, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, whereas the subject Variance was issued more than 35 years ago; and

WHEREAS, the Board agrees that the differences in timing and the health of the respective real estate markets distinguish the *Bella Vista* case from the instance case and supports the conclusion that the use of the subject site's unused development rights was not foreseeable by the owner of the Development Site or the Board; and

WHEREAS, therefore, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings pursuant to ZR § 72-21, specifically the (b) and (e) findings, at the time that they were made; and

WHEREAS, at hearing, the Board requested that the applicant demonstrate compliance with the conditions of the prior Resolution, including the condition fire protection measures in the building and available tenant recreational space on the roof; and

WHEREAS, in response, the applicant submitted a sealed architect's letter attesting to compliance with all of the conditions; and

WHEREAS, on July 8, 1992, the Landmark's Preservation Commission ("LPC") issued a Certificate of No Effect (CNE 93-0053) to permit interior alterations at the fifth floor of the subject building and construction of a non-visible rooftop addition; and

WHEREAS, on April 28, 2000, LPC permitted amendments to the scope of work including the construction of a wood roof deck to surround the rooftop addition, and to update the plumbing specifications; and

WHEREAS, on October 23, 2013, LPC issued a Certificate of Appropriateness (COFA 15-0399) to permit, at 39-41 West 23rd Street (lot 20), the construction of a 23-story terra cotta, limestone and glass building with decorative metal balcony railings, with an 18-story street wall and a cantilever

MINUTES

over the lot to the east at the 14th floor, on West 23rd Street; construction of a 10-story limestone and glass building with glass balcony railings on West 24th Street; and ground floor storefronts and entrance canopies on both buildings; and

WHEREAS, on February 10, 2014, LPC issued a Certificate of No Effect (CNE 15-4052) to permit, at the subject site, the removal of a portion of the north and east walks of the existing non-visible rooftop penthouse, and enlargement of the penthouse by constructing a one- (1) story stucco-clad rooftop extension to the north and east penthouse walls with a pitched roof to match the height and profile of the existing penthouse roof; installation of four (4) new skylights, a new roof deck, and partially visible metal pipe railings with a black finish at the rooftop; and the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical, and HVAC work; and

WHEREAS, LPC notes that a permit for required restorative work at the subject building, CNE 15-5956, expired on April 2, 2018, and no Notice of Compliance was issued for restorative work and no extension was granted; and

WHEREAS, accordingly, in consideration of LPC's jurisdiction over the subject site, the Board conditions this approval on the completion of restorative work permitted pursuant to CNE 15-5956 and any restrictive declaration entered into with LPC related thereto prior to the issuance of any certificate of occupancy, including temporary certificate of occupancy, to the subject building; and

WHEREAS, based upon its review of the record, the Board does not object to the amendment to legalize the construction of the penthouse addition and the transfer of unused development rights from the subject site to the Development Site or to the proposed zoning lot merger, but notes that any further changes to the subject site that are inconsistent with this or prior approvals are subject to the Board's review and approval.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, adopted on June 8, 1980, so that as amended this portion of the resolution shall read: to legalize the construction of a 754 square foot penthouse and to permit the merger of the subject site with contiguous parcels on Block 825, in Manhattan, and the associated modifications to the BSA approved site plan; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "January 29, 2019"-Seven (7) sheets; and *on further condition*:

THAT all building restoration work permitted by the New York City Landmarks Preservation Commission ("LPC") pursuant to Certificate of No Effect 15-5956 and any restrictive declaration entered into with LPC related thereto shall be completed prior to the issuance of any certificate of occupancy, including temporary certificate of occupancy, to the subject building;

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdictions, including modifications to the buildings on the site;

THAT a smoke detector with a self-contained alarm be installed in each apartment;

THAT the existing sprinkler system be permanently retained and properly maintained;

THAT a manual fire alarm station, connected to an alarm that can be heard throughout the building, be installed on each floor;

THAT 25 percent of the roof area be allocated as tenant recreational space;

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

THAT the above conditions appear on the certificate of occupancy;

THAT a new certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 40-80-BZ") be obtained within one (1) year, by February 12, 2020; and

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

429-29-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubricatorium to an accessory convenience store with a drive-thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for adjourned hearing.

MINUTES

115-53-BZ

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

SUBJECT – Application May 11, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on July 11, 2018. C2-2R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for adjourned hearing.

26-02-BZ

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

SUBJECT – Application December 20, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses, which expired on April 15, 2017; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1680 Richmond Avneue a/k/a 3101 Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

189-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application December 13, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the legalization of a Physical Culture Establishment (New York Sports Club) in the cellar, first and second floors in the six-story mixed-use building which

expired on November 18, 2018. C6-2 NOHO Historic District.

PREMISES AFFECTED – 232 Mercer Street, Block 532, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

150-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 30 Broad Street Venture LLC, owner; TSI 30 Broad Street LLC dba New York Sports Club, lessee.

SUBJECT – Application July 13, 2016 – Amendment of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (New York Sports Club) in portions of the second floor and second floor mezzanine with an entrance at the ground level. The amendment seeks to enlarge the establishment into a portion of the sub-cellar and reflect a change in the operator. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, Block 24, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 620A, 620B, 620C Sharrotts Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for adjourned hearing.

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – Proposed enlargement of a one family home to a one family home with attic and community facility (UG 3) day care not fronting on a legally mapped street, contrary to General City Law 36. R3-1 zoning district.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

MINUTES

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-258-BZ

CEQR #18-BSA-026X

APPLICANT – Eric Palatnik, P.C., for Aftab Hussain, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-211) to permit the use of Automotive Service Station (UG 16B) (Mobil) with accessory automotive repair contrary to ZR §32-35. C2-2/R6 zoning district.

PREMISES AFFECTED – 6161 Broadway, Block 5814, Lot 1182, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 12, 2018, acting on Department of Buildings (“DOB”) Application No. 220593098, reads in pertinent part:

Proposed gas station in C2-2/R6 zoning district is not permitted as-of-right pursuant to ZR 32-10 & 32-31 and requires a special permit [] to 73[-]211; and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to permit the reconstruction of an automotive service station, previously constructed pursuant to a variance granted by the Board, with an accessory convenience store (Use Group 16B) on a site located in an R6 (C2-2) zoning district; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 12, 2019, and then to decision on that same date; and

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, Chair Perlmutter, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southwest corner of Broadway and West 251st Street, in an R6 (C2-2) zoning district, in the Bronx; and

WHEREAS, the site has approximately 175 feet of frontage along Broadway, 75 feet of frontage along West

251st Street, 13,975 square feet of lot area and is occupied by a one- (1) story building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1954, when, under BSA Cal. No. 790-53-BZ, the Board granted a variance to permit the reconstruction and extension of the lawfully existing gasoline service station, substantially as proposed and as indicated on plans filed with the application, on condition that all building and uses be removed from the premises and the premises be reconstructed and rearranged as indicated on such plans, except that all pumps be located no nearer than 15 feet to the street building line, and be parallel to the building line, and not at an angle; the accessory building be located substantially as shown on plans, and comply in all other respects with the requirements of the building code, and be constructed of face brick on all exterior sides; there be no cellar under such building; on the lot line to the west there be erected a masonry wall of a height of not less than 5’-6”; a similar wall be erected where walls of adjoining buildings do not occur on the south and north lot lines, except that on the north lot line it may extend for a distance of approximately 40 feet from the rear line; the premises be levelled substantially to the grade of Broadway and be paved with concrete or asphaltic pavement and properly rolled; the number of gasoline storage tanks not exceed ten (10) 550-gallon tanks; the existing 1000-gallon gasoline storage tank be removed or sealed against any use; curb cuts be restricted to three (3) curb cuts, each 35 feet in width to Broadway, located where shown, and one (1) curb cut to West 251st Street within 25 feet of the Broadway building line as shown; signs be restricted to a permanent sign attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the erection within the building line of one (1) post standard near the intersection of 251st Street for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale, permitting such sign to extend beyond the building line for a distance of not more than four (4) feet; such portable firefighting appliances be maintained as the Fire Commissioner directs; under Section 7c there may also be parking and storage of motor vehicles awaiting service and other motor vehicles of the pleasure type only; under Section 7i there may be minor repairing with hand tools only maintained solely within the accessory building; all permits be obtained and all work completed within one (1) year, by November 9, 1955; and, that a new certificate of occupancy be obtained; and

WHEREAS, on October 18, 1955, under BSA Cal. No. 790-53-BZ, the Board amended the variance to extend the time to obtain permits and complete the work for one (1) year, expiring on October 18, 1956; and

WHEREAS, on September 25, 1956, under BSA Cal. No. 790-53-BZ, the Board amended the variance and extended the time to obtain permits and complete the work for one (1) year, expiring on September 25, 1957; and

WHEREAS, on April 23, 1991, under BSA Cal. No.

MINUTES

790-53-BZ, the Board reopened and amended the resolution, adopted November 9, 1954, as amended through September 25, 1956, to permit changes to the design and arrangement of the existing automotive service station, and to change the existing multiple product dispenser (“MPD”) pumps to self-serve pumps; to install a fire suppression system, mounted on each light standard; to alter the existing sales and office area of the accessory building to accommodate an attendant’s booth and to legalize the removal of a portion of the westerly lot line fence in order to legalize the increase of the gasoline station area within the same lot for parking of cars, substantially as shown on revised drawings of proposed conditions, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and substantial construction be completed within one (1) year, by April 21, 1992, and that other than as amended the resolution be complied with in all respects; and

WHEREAS, on December 2, 1992, under BSA Cal. No. 790-53-BZ, the Board reopened and amended the resolution, as amended through April 23, 1991, to permit the relocation of the two (2) existing concrete pump islands and the installation of an additional concrete pump island with self-service pumps to permit also the erection of a new metal canopy over pump islands on condition that there be no outdoor repair work on the site; the fences be adequately maintained and repaired when necessary; the premises be kept graffiti free; the entire site be in substantial compliance with proposed conditions; other than as amended the resolution be complied with in all respects; and, substantial construction be completed within one (1) year, by December 2, 1993; and

WHEREAS, on February 22, 1995, under BSA Cal. No. 790-53-BZ, the Board waived its Rules of Procedure, reopened and amended the resolution to extend the time to complete substantial construction for 27 months from December 2, 1993, by March 2, 1996; and

WHEREAS, the applicant proposes to reconstruct an automotive service station with six (6) gasoline pumps and lubritorium with minor auto repairs, nine (9) accessory off-street parking spaces, and maintain the existing building, utilizing 213 square feet of sales area for automotive accessories with additional spaces for two bathrooms, utility storage, attendant area and lubritorium with minor auto repairs-hand tools only; and

WHEREAS, ZR § 73-211 reads as follows:

In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in *streets*¹), the Board of Standards and Appeals may permit *automotive service stations*, provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not

located on an arterial highway or a major *street* has a maximum area of 15,000 square feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened, as the Board may prescribe, by either of the following methods:
 - (a) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years; or
 - (b) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
 - (a) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit *non-illuminated* or *illuminated non-flashing signs* with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
 - (b) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect *residential zoning lots* which are

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

adjoining or across the *street*.

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, the Board confirms that the subject site is located in an R6 (C2-2) zoning district that has a longer dimension of at least 375 feet; that the subject site has a minimum of 7,500 square feet of lot area; that the site is located on a major street and, with 13,975 square feet of lot area, has an area of less than 15,000 square feet; and

WHEREAS, with regards to the conditions the Board is required to prescribe pursuant to ZR § 73-211, the applicant represents that the proposed automotive service station will have facilities for lubrication, minor repairs or washing of automobiles located within a completely enclosed building and that the site is proposed to provide public parking spaces for a total of nine (9) motor vehicles, including vehicles awaiting service, in addition to those spaces available at the pumps; and

WHEREAS, the Board notes that, pursuant to ZR 32-17, public parking lots with a capacity of 150 spaces or less (Use Group 8C) are permitted at the subject site as-of-right; and

WHEREAS, in reference to vehicular movement on the site, the applicant submits that the entrances and exits have been planned so that at maximum operation, vehicular movement into or from the site will cause minimum obstruction on the surrounding streets or sidewalks, and vehicles will enter and exit the lubrication for repairs through the two existing overhead doors facing Broadway; and

WHEREAS, the applicant proposes the installation of green vinyl slats on the existing six- (6) foot high chain link fence on a 12" concrete wall located along the western property line to be 50% opaque, as well as landscaping along the southern, western and eastern property lines with 42 two- (2) foot tall Chinese junipers, 27 six- (6) to eight- (8) foot tall emerald arborvitae, and 33 18"-24"-tall everlow hollies; and

WHEREAS, the applicant also proposes to provide five (5) illuminated signs, ranging in size from 13.1 square feet to 24 square feet, totaling 75.3 square feet, and one (1) non-illuminated sign, 71 square feet in size, none of which will face the adjoining Residence District and none of which will project over the property line; and

WHEREAS, the Board finds that the applicant has submitted substantial evidence that the findings set forth in ZR § 73-211 have been met; and

WHEREAS, the applicant states that there are no proposed or existing capital projects along the subject site; and

WHEREAS, the Board finds that the subject proposal will not interfere with a pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguard 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, by letter dated November 17, 2018, the Fire Department stated that it has no objection to this application; that, if the Board grants a special permit for this application, units in the Bureau of Fire Prevention will be notified and copies of the Board's resolution and plans will be provided to the Bulk Fuel Safety Unit ("BFSU"), the unit responsible for the inspection of the automotive service station; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement ("EAS") Short Form, CEQR No. 18BSA026X, dated July 6, 2018; and

WHEREAS, the EAS documents that the proposed alteration of a former automotive service station with new storage tanks, pump islands, canopy and site improvements will not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the Board has determined that the operation of the automotive service station at the premises will not have a significant adverse impact on the environment.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03 to permit, in an R6 (C2-2) zoning district, the reconstruction of an automotive service station with an accessory convenience store (Use Group 16); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 12, 2019" Nine (9) sheets; and *on further condition*:

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

THAT the fences shall be adequately maintained and repaired when necessary;

THAT the premises shall be kept graffiti free at all times;

THAT facilities for lubrication, minor repairs or

MINUTES

washing shall be located within a completely enclosed building;

THAT the site is designed as to provide reservoir space for five waiting automobiles within the subject zoning lot in addition to spaces available within an enclosed lubricatorium at the pumps, as illustrated in the BSA-approved plans;

THAT entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the automotive service station will cause a minimum obstruction on streets or sidewalks, as illustrated on the BSA-approved plans;

THAT the subject zoning lot is screened along any rear lot line or side lot line adjoining a residence district, as illustrated on the BSA-approved plans;

THAT landscaping, as shown on the BSA-approved plans, shall be maintained in first-rate condition and replaced as needed;

THAT all signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-258-BZ"), be obtained within four (4) years, by February 12, 2023;

THAT substantial construction shall be completed in accordance with ZR § 73-70, by February 12, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

2017-291-BZ

CEQR #18-BSA-051K

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-141 (floor area ratio & open space ratio); ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1367 East 26th Street, Block 7662, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 3, 2017, acting on Department of Buildings ("DOB") Application No. 321186337, reads in pertinent part:

1. ZR 23-141 The proposed plans are contrary to the Zoning Resolution 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
2. ZR 23-141 The proposed plans are contrary to the Zoning Resolution 23-141 in that the open space ratio (OSR) is less than 150%;

[. . .]

4. ZR 23-47 Plans are contrary to the Zoning Resolution 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the conversion, merger and enlargement of two (2) semi-detached single-family dwellings into one (1) single-family dwelling¹ that does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio and rear yards contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice by publication in *The City Record*, with continued hearings on August 14, 2018, November 8, 2018, and February 12, 2019, and then to decision on that same date; and

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

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

WHEREAS, the Board was in receipt of six (6) form letters in support of this application; and

WHEREAS, the subject site is located on the east side of East 26th Street, between Avenue M and Avenue N, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage, 100 feet of depth, 6,000 square feet of lot area, and is occupied by two (2) two- (2) story plus cellar single-family semi-detached dwellings together containing 3,055 square feet of floor area (0.51 FAR), an open space ratio of 1.37 (4,193

¹ This application was originally filed for the enlargement of the single-family dwelling located on lot 17 with a separate application filed for the enlargement of the single-family dwelling located on lot 19 under BSA Cal. No. 2017-292-BZ. That application was subsequently withdrawn, the two (2) tax lots merged on the New York City Department of Finance Digital Tax Map and the subject application amended to include both dwellings.

MINUTES

square feet of open space), a front yard with a depth of 17'-9", a rear yard with a depth of 31'-7", two (2) side yards with widths of 7'-11" and 8'-0", and two (2) detached sheds in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged*

building is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge semi-detached single-family residences, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to combine the semi-detached dwellings, convert them to one (1) single-family dwelling and enlarge the dwelling both vertically and horizontally, resulting in one (1) three- (3) story plus cellar detached single-family dwelling containing 6,000 square feet of floor area (1.0 FAR), an open space ratio of 0.6 (3,660 square feet of open space), a front yard with a depth of 17'-9", a rear yard with a depth of 27'-3", two (2) side yards with widths of 7'-11" and 8'-0", and maintaining one (1) detached shed in the rear; and; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,807 square feet to 2,340 square feet, the second floor from 1,248 square feet to 2,418 square feet, and create a third floor with 1,242 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.50 is required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141 and 23-47; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises and within an R2 zoning district (the "Study Area") concluding that, of the 111 qualifying residences, 90 residences (81 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.29, and 15 residences (14 percent) have an FAR of 1.00 or greater; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

the 38 other single- or two- (2) family dwellings for which dimensions were provided, 18 lots (47 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 11 feet to 29'-9", including the lot located at the rear and adjacent to the subject site, which has a rear yard depth of 20 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-051K, dated May 11, 2017; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the conversion, merger and enlargement of two (2) one- (1) family semi-detached dwellings into one (1) single-family detached dwelling, that does not comply with the zoning requirements with regards to floor area ratio, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "February 12, 2019"—Thirteen (13) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.0 (6,000 square feet of floor area), a minimum open space ratio of 0.6 (3,660 square feet of open space), and a rear yard with a minimum depth of 27'-3" at all stories;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this

approval and calendar number ("BSA Cal. No. 2017-291-BZ") shall be obtained within four (4) years, by February 12, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

2017-292-BZ

APPLICANT – Law Office of Jay Goldstein, for Baruch Wieder, owner.

SUBJECT – Application November 2, 2017 – Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-141 (floor area ratio & open space ratio); ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1363 East 26th Street, Block 7662, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

2018-51-BZ

CEQR #18-BSA-121Q

APPLICANT – Eric Palatnik, P.C., for Abraham Tannenbaum, owner.

SUBJECT – Application April 11, 2018 – Variance (§72-21) to permit the construction of a two-story single-family home with an attic that does not provide the required lot area and lot width, front yard, side yard, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461(a) and 23-631(d). R5 zoning district.

PREMISES AFFECTED – 11-01 Plainview Avenue, Block 15618, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

MINUTES

Commissioner Scibetta.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on New Building Application No. 421411860, reads in pertinent part:

1. Proposed minimum lot area and lot width is contrary to ZR 23-32.
2. Proposed front yard is contrary to ZR 23-45.
3. Proposed side yard is contrary to ZR 23-461(a).
4. Proposed setback distance and sky exposure plane is contrary to ZR 23-631(d); and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R5 zoning district, the development of a three-story, with cellar, single-family residence that does not comply with applicable zoning regulations for lot area, lot width, front yards, side yards, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461 and 23-631; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 8, 2019, and then to decision on February 12, 2019; and

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

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

WHEREAS, residents of the surrounding area submitted testimony in support of and in opposition to this application, citing concerns with the neighborhood character, the potential loss of light and air to adjacent residences and the lack of dollars and cents proof regarding the possibility of realizing a reasonable return; and

WHEREAS, the subject site is located on the southwest corner of Plainview Avenue and Beach 11 Street, in an R5 zoning district, in Queens; and

WHEREAS, the subject site has approximately 28 feet of frontage along Plainview Avenue, 48 feet of frontage along Beach 11 Street, 1,346 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop a three-story, with cellar, single-family residence with front yard depths of 10’-0” along Plainview Avenue and 4’-4” along Beach 11 Street, side yard depths of 4’-0” to the west and 8’-0” to the south, no setback and a sky exposure plane of 40 degrees to the horizontal; and

WHEREAS, the applicant states that, at the subject site, front yards must have minimum depths of 10 feet under ZR § 23-45, one side yard must have a minimum depth of 20 feet under ZR § 23-461 and, above a 30-foot street wall, there must be a setback with a depth of 15 feet with no obstruction permitted through the sky exposure plane of 20 degrees to the horizontal under ZR § 23-631; and

WHEREAS, the applicant states that the subject site is a small lot, situated at the corner of two streets, that is vacant and owned singly and separately from adjacent properties, which constitute unique physical conditions that create practical difficulties or unnecessary hardship in complying with applicable zoning regulations; and

WHEREAS, the applicant submits that strictly complying with applicable bulk regulations would result in a single-family residence with a footprint of 17’-6” by 13’-4”, which would only allow for an uninhabitable bedroom of 6’-4” by 9’-10”; and

WHEREAS, with respect to uniqueness, the applicant surveyed the surrounding area, finding that there are approximately eight lots smaller than the subject site, none of which are situated at a street corner or similarly burdened by applicable zoning regulations; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the applicant proposes a to develop a habitable single-family residence, the Board need not find that, because of the above unique physical conditions, there is no reasonable possibility that strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant submits that the proposed development is consistent with the character of the surrounding area and will not substantially impair the appropriate use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant studied the character of the surrounding area, determining that the other similarly small lots in the vicinity are occupied by one- and two-family residences and that most properties have at least one side yard with a depth of 0 feet; and

WHEREAS, additionally, in response to community concerns, the applicant submitted a height study, a Floor Area Ratio Study and a photographic streetscape montage indicating that the proposed development is consistent with the built form of the surrounding area and would not adversely affect the use or development of surrounding properties; and

WHEREAS, with respect to the height of the building, the applicant also submits that the proposed residence will comply with flood regulations, including Article 6, Chapter 4, of the Zoning Resolution and Appendix G of the New York City Building Code, as applicable, as reviewed and approved by DOB, which results in a taller building form; and

WHEREAS, at hearing, with respect to community concerns, the Board further noted that the distance of approximately 20 feet of the proposed development from adjacent residences is greater than the minimum distance required by the Zoning Resolution, further indicating that this application is a modest proposal; and

MINUTES

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

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, in particular, the applicant submits that the subject site constitutes a single and separate zoning lot from adjacent properties; that, after foreclosure in 1977, the City transferred title to a separate owner from adjacent Tax Lot 7; that the subject site has never been in common ownership with Tax Lot 9; that the subject site has maintained its configuration with respect to the lot depth and width since at least 1959; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to allow a productive use of the site, as reflected in the proposed drawings; and

WHEREAS, the applicant also provided drawings indicating that, for a development without the variance of setback and sky exposure plane, the attic would be uninhabitable because of a 5'-10" room dimension; and

WHEREAS, at hearing, in response to community concerns, the Board further noted that the proposed development does not request additional floor area and is not proposing two dwelling units, which could result in a larger minimally habitable residence, thereby demonstrating that the proposed development is a modest proposal; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-121Q, dated July 16, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R5 zoning district, the development of a three-story single-family residence that does not comply with applicable zoning regulations for lot area, lot width, front yards, side yards, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461 and 23-631; *on condition* that all work, operations and site conditions shall conform to

drawings filed with this application marked "Received January 24, 2019"- Fourteen (14) sheets; and *on further condition:*

THAT bulk parameters of the building shall be as follows: front yard depths of 10'-0" along Plainview Avenue and 4'-4" along Beach 11 Street, side yard depths of 4'-0" to the west and 8'-0" to the south, no setback and a sky exposure plane of 40 degrees to the horizontal, as illustrated on the Board-approved drawings;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2018-51-BZ"), shall be obtained within four (4) years, by February 12, 2023;

THAT flood regulations, including Article 6, Chapter 4, of the Zoning Resolution and Appendix G of the New York City Building Code, as applicable, shall be complied with as reviewed and approved by the Department of Buildings;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 12, 2019.

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2016-4240-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the

MINUTES

first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – Variance (§72-21) to permit the construction of a mixed residential and community facility (*Congregation Divrei Yoel*) contrary to ZR §23-153 (Maximum Lot Coverage) and ZR §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266, Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2017-244-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – Variance (§72-21) to permit the construction of a seven-story plus penthouse mixed commercial and residential building contrary to floor area regulations of ZR §111-20; street wall regulations of ZR §23-662; accessory parking regulations of ZR §13-11; and the curb cut location requirements of ZR §13-241. C6-2A (Special Tribeca Mixed Use District. Tribeca East Historic District.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for adjourned hearing

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2017-313-BZ

APPLICANT – Moshe M. Friedman, P.E., for 853 Kent Avenue LLC, owner.

SUBJECT – Application December 11, 2017 – Variance (§72-21) to permit the development of a 2-family dwelling contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 853 Kent Avenue, Block 1898, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M. for continued hearing.

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 23,

MINUTES

2019, at 10 A.M. for continued hearing.

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M. for continued hearing.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 12, 2019
1:00 P.M.

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

ZONING CALENDAR

2018-165-BZ

CEQR #19-BSA-049M

APPLICANT – Jay Goldstein, Esq., for RS Associates LLC, owner; CorePower Yoga, lessee.

SUBJECT – Application October 18, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*CorePower Yoga*) on a portion of the first floor on an existing building contrary to ZR §32-10. C6-2A (TMU) Tribeca West Historic District.

PREMISES AFFECTED – 25 Hudson Street, Block 141, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated September 21, 2018, acting on Department of Buildings (“DOB”) Application No.

123198066, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district and in the Special Tribeca Mixed Use District and Tribeca West Historic District, a physical culture establishment (“PCE”) on the first floor of an existing 12-story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the southwest corner of Hudson Street and Duane Street, in a C6-2A zoning district and in the Special Tribeca Mixed Use District and Tribeca West Historic District, in Manhattan; and

WHEREAS, the site has approximately 122 feet of frontage along Hudson Street, 45 feet of frontage along Duane Street, 126 feet of depth, 8,983 square feet of lot area and is occupied by a 12-story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 3,750 square feet of floor area on the first floor with two (2) yoga studios, men's and women's changing areas with bathrooms and showers, a reception and lobby area, and electrical, mechanical and utility spaces; and

WHEREAS, the PCE has operated since October 2018, as "CorePower Yoga," operating daily from 5:30 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that sound attenuation measures have been installed in the partitions, ceilings and flooring of the PCE space to mitigate any potential disturbance to nearby occupancies; specifically, the applicant represents that the partitions of the yoga studios are constructed with two (2) layers of 5/8" sheetrock and 4" sound attenuated batt insulation to provide a rating of STC 60; 4" isolated flooring in the studios to provide a rating of STC 64; all penetrations through the studio ceilings and partitions are sealed with acoustical sealant; and, the studio ceilings utilize isolated hangers to provide a rating of STC 69; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located entirely in an existing mixed-use building, and it is not anticipated to draw significant additional traffic to the neighborhood; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE is located in an area characterized by residential and commercial uses, already heavily trafficked by local residents and retail customers, and most patrons to the PCE walk or use mass transit; and

WHEREAS, the applicant states that the PCE is protected with a wet sprinkler system and an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station; and

WHEREAS, by letter dated January 31, 2019, the Fire Department stated that it has no objection to the application and confirmed that the fire alarm and fire suppression (combination standpipe and sprinkler) systems were inspected and tested satisfactory to the Department standards; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant submits that the New York City Landmarks Preservation Commission, pursuant to Certificate of No Effect (CNE-19-21025) dated February 6,

MINUTES

2018, permitted the replacement of three (3) single-light transoms with green painted (Benjamin Moore “Dollar Bill Green”) louvers at the ground floor storefront at the north (Duane Street) façade; the installation of a through-wall louver at the ground floor of the west (rear) courtyard façade; and, interior alterations at the ground floor, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical and sprinkler work; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-049M, dated October 22, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district and in the Special Tribeca Mixed Use District and the Tribeca West Historic District, the operation of a physical culture establishment on the first floor of an existing 12-story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 22, 2018”- Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 1, 2028;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-165-BZ”), shall be obtained within one (1) year, by February 12,

2020;

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M. for continued hearing.

2018-58-BZ

APPLICANT – Sahn Ward Coschignano, PLLC, for MOCAL Enterprises, Inc., owner; AKT Broadway LLC, lessee.

SUBJECT – Application April 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (AKT In-Motion) on the second floor of an existing mixed-use building contrary to ZR §42-10. M1-6 (Madison Square North Historic District).

PREMISES AFFECTED – 1182 Broadway, Block 830, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M. for continued hearing.

2018-140-BZ

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

SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.

PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

MINUTES

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M. for postponed hearing.

2018-155-BZ

APPLICANT – Jay Goldstein, Esq., for Moishe Loketch, owner.

SUBJECT – Application October 9, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461(A) (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 1123 East 27th Street, Block 7627, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

MINUTES

CORRECTION

This resolution adopted on January 22, 2016, under Calendar No. 193-13-BZ and printed in Volume 101, Bulletin No. 4, is hereby corrected to read as follows:

193-13-BZ

CEQR #14-BSA-001X

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

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 10, 2013, acting on DOB Application No. 220244135, reads:

Proposed reduction in accessory parking in use group 6, category B1, is contrary to ZR Section 36-21 and therefore requires a special permit from the NYC BSA Pursuant to ZR Section 73-44; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, on a site located partially within an R6A (C2-2) zoning district and partially within an R5 zoning district, the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 6 office space from 190 spaces to 95 spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the City Record, with continued hearings on March 11, 2014, May 20, 2014, August 19, 2014, October 7, 2014, November 18, 2014, July 21, 2015, and December 8, 2015, and then to decision on January 22, 2016; and

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

WHEREAS, Community Board 12, the Bronx, recommends approval of the instant application; and

WHEREAS, the subject site is a corner lot located on

the east side of White Plains Road between East 242nd Street and Penfield Street, with approximately 245 feet of frontage along East 242nd Street, 199 feet of frontage along White Plains Road and 215 feet of frontage along Penfield Street, partially within an R6A (C2-2) zoning district and partially within an R5 zoning district, in the Bronx; and

WHEREAS, the site has approximately 46,029 sq. ft. of lot area and is improved with a three-story plus cellar building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 15, 1923 when, under BSA Calendar Number 317-23-BZ (the “1923 Resolution”), the Board granted a special permit to allow the erection and maintenance of a garage for the storage of more than five motor vehicles; and

WHEREAS, the 1923 Resolution identifies the premises as one “partly in a business district and partly in a residence district” and acknowledges that the office use on the second floor of the proposed building would “extend approximately 30 ft. into the residence district”; and

WHEREAS, on October 27, 1970, under BSA Calendar Number 376-70-BZ (the “1970 Resolution”), the Board granted a special permit to allow the enlargement of the second floor and a new third floor for the existing building that exceeded the permitted floor area ratio and penetrated the sky exposure plane; and

WHEREAS, the applicant represents that the plans approved in association with the 1970 Resolution show parking spaces on the portion of the zoning lot within a residential district and, further, that the description of the lot in the 1923 Resolution in the 1970 Resolution matches the description of the current zoning lot, thus demonstrating that the current lot is the same lot over which the Board exercised jurisdiction in both the 1923 Resolution and the 1970 Resolution and that the Board has previously exercised its jurisdiction over the portion of the lot located in a residential district; and

WHEREAS, the applicant proposes to alter the interior of the existing building to provide approximately 57,043 sq. ft. of floor area for UG 6 office space on the first, second and third floors, and 11,627 sq. ft. of floor area for UG 6 retail space on the ground floor, for a total of approximately 68,670 sq. ft. of floor area; and

WHEREAS, the 11,627 sq. ft. of UG 6 retail space is not the subject of this application and the applicant proposes to provide the 39 accessory parking spaces required for that use pursuant to ZR § 36-21; and

WHEREAS, the applicant seeks a reduction in the required number of parking spaces for the UG 6 office use, as set forth below; and

WHEREAS, the applicant states that, pursuant to ZR §36-21, 190 accessory parking spaces are required for the UG 6 office space use; and

MINUTES

WHEREAS, the applicant calculates the office space parking requirement as follows: pursuant to ZR § 36-21, within the C2-2 zoning district, the subject UG 6 office space requires one accessory parking space for every 300 sq. ft. of floor area; thus the proposed UG 6 office floor area at the site requires 190 accessory parking space; however, the applicant seeks to provide 134 parking spaces, resulting in a deficit of 56 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may grant a special permit allowing a reduction in the required number of accessory off-street parking spaces for the UG 6 office space and, specifically, the Board may reduce the required parking for such use from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 73-44, the Board must, prior to granting the special permit, determine that the UG 6 use in parking category B1 is contemplated in good faith; and

WHEREAS, to satisfy the good faith argument, the applicant has submitted an affidavit sworn to on June 25, 2013; and

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

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in parking will impact the surrounding community in terms of parking and traffic; and

WHEREAS, in response, the applicant submitted a parking study, which demonstrates that the proposed reduction in accessory off-street parking spaces associated with the UG 6 office space use will meet the demand created by the use and not have significant negative impacts on the surrounding community; and

WHEREAS, the applicant represents that the subject premises is located in an area well-served by public transportation, including four bus routes on White Plains Road, a 2 train station located approximately 660 feet south of the subject premises, and a Metro-North Railroad station located approximately 2,000 feet southwest of the subject premises; and

WHEREAS, the applicant also notes that the proposed accessory off-street parking area includes a steel fence with decorative concrete coating and brick pattern stamping at its

base and new 12'-0" tall arborvitae trees to shield the parked cars from neighbors; that 44 double stackers are located at the lower level of the parking area, further from residential development and hidden from sight; and that the lights in the parking area will be pointed down and away from surrounding properties; and

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

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-03 and 73-44 have been met; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14BSA001X, dated June 27, 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 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 makes each and every one of the required findings under ZR §§ 73-03 and 73-44 to permit, on a site located partially within a C8-1 zoning district, and partially within an to permit, on a site located in partially within an R6A (C2-2) zoning district and partially within an R5 zoning district, the reduction in the required number of accessory parking spaces for a Use Group ("UG") 6 office space from 190 spaces to 95 spaces, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received December 23, 2015"–

MINUTES

Fourteen (14) sheets, and on further condition:

THAT a minimum of 134 parking spaces shall be provided at the site;

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

THAT a certificate of occupancy shall not be issued if either of the uses for which parking has been reduced has been changed to a use listed in parking category B, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the applicant shall provide landscaping as shown on the BSA-approved plans;

THAT the landscaping shall be maintained at all times to conceal parking area, including the upper level of the double stackers;

THAT the walls shall be maintained free of graffiti;

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 January 22, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, January 22, 2016.

***The resolution has been Amended to correct the part of the conditions which read: ...229 parking spaces... now reads: ...134 parking spaces.... Corrected in Bulletin No. 8, Vol. 104, dated February 22, 2019.**

BULLETIN

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March 8, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-----------------------------------|-----|
| DOCKET | 147 |
| CALENDAR of March 19, 2019 | |
| Morning | 148 |
| Afternoon | 148 |
| SPECIAL HEARING of March 20, 2019 | |
| Morning | 149 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, February 26, 2019**

Morning Calendar150

Affecting Calendar Numbers:

| | |
|---------------------------------|---|
| 1059-84-BZ | 943/61 Kings Highway aka 2032 Coney Island Avenue, Brooklyn |
| 336-98-BZ & 337-98-BZ | 312-318, 324-334 Flatbush Avenue, Brooklyn |
| 2016-4141-BZ | 27 Barclay Street, Manhattan |
| 867-55-BZ | 66-15 Borden Avenue, Queens |
| 813-87-BZ | 110 Boerum Place, Brooklyn |
| 223-00-BZ | 272 West 10 th Street, Manhattan |
| 18-09-BZ | 250 West 54 th Street, Manhattan |
| 231-14-BZ | 124 West 23 rd Street, Manhattan |
| 122-07-BZ | 1630 East 15 th Street, Brooklyn |
| 2016-4296-A thru 2016-4298-A | 3236, 3238 Schley Avenue and 580 Clarence Avenue, Bronx |
| 2016-4473-A | 72-74 East 3 rd Street, Manhattan |
| 2017-248-A | Long Island Expressway and 74 th Street, Queens |
| 2017-263-A | 62-66 West Broadway, Manhattan |
| 2018-147-A | 3805 Beach 38 th Street, Brooklyn |
| 205-15-A thru 214-15-A | 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Queens |
| 2017-16-A thru 2017-19-A | 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Queens |
| 2018-105-A | 150-87 Clintonville Court, Queens |
| 2016-4274-BZ | 1411 39 th Avenue, Brooklyn |
| 2016-4335-BZ | 220-21 137 th Avenue, Queens |
| 2016-4339-BZ | 5018 14 th Avenue, Brooklyn |
| 2017-8-BZ | 356-362 East 139 th Street, Bronx |
| 2018-10-BZ | 1238 East 26 th Street, Brooklyn |
| 2018-58-BZ | 1182 Broadway, Manhattan |
| 2018-99-BZ | 275 Pleasant Avenue, Manhattan |
| 2018-107-BZ | 1441 South Avenue, Staten Island |
| 2016-4153-BZ | 4701 19 th Avenue, Brooklyn |
| 2018-64-BZ & 2018-65-A | 725 Mobile Road, Queens |

Afternoon Calendar193

Affecting Calendar Numbers:

| | |
|-------------|--|
| 231-15-BZ | 5278 Post Road, Bronx |
| 2017-301-BZ | 467 Marcy Avenue, Brooklyn |
| 2018-96-BZ | 145 Ludlow Street, Manhattan |
| 2018-117-BZ | 2060 63 rd Street, Brooklyn |

DOCKETS

New Case Filed Up to February 26, 2019

BLANK

CALENDAR

REGULAR MEETING MARCH 19, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 19, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

278-86-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.
SUBJECT – Application October 29, 2013 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (White Castle), which expired on November 26, 2011, amendment to the plans, and Waiver of the Rules. C1-2/R5 zoning district.
PREMISES AFFECTED – 1677 Bruckner Boulevard, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

126-93-BZ

APPLICANT – Sohail Humayun, for Majid Eljamal, owner.
SUBJECT – Application February 2, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on January 18, 2015; Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 1225 East 233rd Street, Block 4955, Lot 1, Borough of Bronx.

COMMUNITY BOARD #12BX

271-09-BZ

APPLICANT – Akerman LLP, for Syracuse Fund II LLC, owner; Jamaica Fitness Group, LLC, lessee.
SUBJECT – Application November 30, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building which is set to expire on January 17, 2019. C2-3 zoning district.
PREMISES AFFECTED – 132-40 Metropolitan Avenue, Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

REGULAR MEETING MARCH 19, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 19, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.
SUBJECT – Application August 17, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Block 4938, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

2017-273-BZ

APPLICANT – Law Office of Lyra J. Altman, for Carol Greenberger & Sidney Greenberger, owners.
SUBJECT – Application September 27, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.
PREMISES AFFECTED – 975 East 24th Street, Block 7588, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.
SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

CALENDAR

2018-143-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; Fithouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

2018-194-BZ

APPLICANT – Law Office of Lyra J. Altman, for IRS LLC by Isaac Stern, owner.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) to permit the conversion and enlargement of a two-family home to a single-family home contrary to ZR §23-141 (Floor Area Ratio and Open Space). R2 zoning district.

PREMISES AFFECTED – 2317 Avenue K aka 1086 East 24th Street, Block 7605, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

SPECIAL HEARING
MARCH 20, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a special hearing, Wednesday, March 20, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 26, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

1059-84-BZ

APPLICANT – Kennedys CMK LLP, for BMS Realty Co., LLC, owner; Hewlett Bay Park, lessee.

SUBJECT – Application July 5, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) to permit changes to the interior partitions and layout. C4-2/C9-2 (Special Ocean Parkway District). PREMISES AFFECTED – 943/61 Kings Highway aka 2032 Coney Island Avenue, Block 6666, Lot 18 Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, waiver of the Board’s Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy, which expired on September 11, 2013, and the amendment of a special permit, previously granted pursuant to ZR § 73-36; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application, commenting that the facility has existed at this location with no complaints from neighbors and that the proposed changes are minor; and

WHEREAS, the subject site is an irregularly shaped lot located on the northwest corner of Kings Highway and Coney Island Avenue, partially in a C4-2 zoning district, partially in a C8-2 zoning district and in the Special Ocean Parkway district, in Brooklyn; and

WHEREAS, the site has approximately 141 feet of

frontage along Kings Highway, 60 feet of frontage along Coney Island Avenue, 38 feet of frontage on Quentin Road, approximately 13,430 square feet of lot area, and is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the cellar (10,235 square feet of floor space), first floor (5,511 square feet of floor area) and second floor (13,060 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1965, when, under BSA Cal. No. 499-65-A, the Board granted an appeal to permit the operation of bingo at the subject site on condition that the building conforms to drawings filed with the application and that a wet automatic sprinkler system be installed throughout the cellar and throughout the second floor; and

WHEREAS, on May 7, 1985, under the subject calendar number, the Board issued a special permit to allow the extension of a physical culture establishment (“PCE”), previously only on the cellar level, to the second floor on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; the special permit be limited to a term of ten (10) years, to expire May 7, 1995; the hours of operation be limited to the following: Monday through Friday, 6:30 a.m. to 10:00 p.m.; Saturday, 9:00 a.m. to 6:00 p.m.; and, Sunday, 9:00 a.m. to 5:00 p.m.; the conditions appear on the certificate of occupancy; the Department of Buildings (“DOB”) issue no permits for a period of 31 days from the date of the resolution; all laws, rules and regulations applicable be complied with; and, substantial construction be completed in accordance with Section 73-70, by May 7, 1989; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board waived its Rules of Procedure, reopened and amended the resolution, adopted on May 7, 1985, to extend the term, on condition that the term of the special permit be limited to a term of ten years from May 7, 1995, to expire on May 7, 2005; the premises be maintained graffiti-free and in substantial compliance with the existing and proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 16, 1997; and

WHEREAS, on October 7, 2003, under the subject calendar number, the Board reopened and amended the resolution, adopted on May 7, 1985, as amended on October 16, 1996, to allow an extension of the permitted use to the first floor, with installation of an elevator and internal stair, and a change in the hours of operation, on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the hours of operation be limited to the following: Monday through Friday, 6:00 a.m. to midnight; Saturday, 9:00 a.m. to 6:00 p.m.; and, Sunday, 9:00 a.m. to 5:00 p.m.; the above conditions and all

MINUTES

conditions from prior resolutions appear on the certificate of occupancy; a new certificate of occupancy be obtained within one (1) year, by October 7, 2004; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on May 15, 2007, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution, dated May 7, 1985, to grant an extension of term of the special permit for a PCE operated by Bally's Total Fitness for ten (10) years, to expire on May 7, 2015, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior approval from the Board; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on December 15, 2015, under the subject calendar number, the Board reopened and amended the resolution, dated May 7, 1985, to permit an extension of term for a term of ten (10) years, a change in operator to 24 Hour Fitness, Inc., and a change in hours of operation to 8:00 a.m. to 9:00 p.m. on Saturday and Sunday, on condition that the site substantially conform to drawings as filed with the application; the grant be limited to a term of ten (10) years, expiring May 7, 2025; all signage on the site comply with all applicable provisions of the Zoning Resolution; the calculations for the signage take into account the square footage of the rooftop sign, if appropriate; the stated hours of the subject PCE be posted conspicuously on the premises; a public assembly permit be obtained by December 15, 2016; all conditions from prior resolutions not specifically waived by the Board remain in effect; the above conditions appear on the certificate of occupancy; a new certificate of occupancy for the premises be obtained by December 15, 2016; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that no changes to the operator (24 Hour Fitness, Inc.) or operation of the PCE are proposed, other than the subject amendment: the applicant seeks reflect changes in the interior partitions of the PCE and a change in designation of spaces within the PCE; and

WHEREAS, the applicant represents that delays in obtaining a certificate of occupancy were the result of issues with code non-compliances with respect to the subject building, and anticipates it will obtain a certificate of occupancy within 18 months of the Board's grant;

WHEREAS, the applicant also requests an amendment to reflect a change in the designation of spaces within the PCE and a modification to the interior partitions of the PCE; and

WHEREAS, by letter dated January 28, 2019, the Fire Department issued a letter of no objection and stated that the Fire Department was in receipt of the applicant's representative's letter dated January 23, 2019, in response to Fire Department violations, and all units in the Bureau of Fire Prevention will be notified of the applicant's comments to the violation orders that are pending, and will reinspect the violations in the near future; and

WHEREAS, at hearing, the Board expressed concerns regarding the relocation of the spin cycling studio within the PCE and whether it was properly protected for sound and vibration, and whether massage services were being provided by the subject PCE; and

WHEREAS, in response, the applicant stated that the spin studio has been in its current location since 2016, the space is protected with double-thick decking, one- (1) inch thick rubber flooring and cushioned tiles, and the PCE has received no noise complaints; and the applicant amended the plans to remove the massage therapy room at the cellar level and confirmed that massage services are not being provided at the PCE; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that an 18-month extension of time to obtain a certificate of occupancy, and the subject amendment to permit a modification to the interior partitions of the PCE, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(d)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 7, 1985, as amended through December 15, 2015, so that, as further amended, this portion of the resolution reads: "to permit an extension of time to obtain a certificate of occupancy for 18 months, to expire on August

MINUTES

26, 2020, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received November 13, 2018 -Two (2) sheets and ‘February 20, 2019’-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 7, 2025;

THAT the hours of operation shall be limited to the following: Monday through Friday, 6:00 a.m. to midnight, Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

THAT all signage on the site comply with all applicable provisions of the Zoning Resolution;

THAT the calculations for the signage take into account the square footage of the rooftop sign, if appropriate;

THAT the stated hours of the subject PCE be posted conspicuously on the premises;

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

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

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 1059-84-BZ”) shall be obtained within 18 months, by August 26, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 312 Flatbush LLC, owner; Crunch LLC, lessee.

SUBJECT – Application September 5, 2017 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on September 11, 2013; Extension of Term which expires on November 23, 2019; Waiver of the Rules. C2-4/R7A zoning district.

PREMISES AFFECTED – 312-318, 324-334 Flatbush Avenue, Block 1057, Lots 14 & 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for reopening, waivers of the Board’s Rules of Practice and Procedure, extensions of the terms of two (2) special permits granted pursuant to ZR § 73-36, which expire on November 23, 2019, extensions of time to obtain certificates of occupancy, which expired on September 11, 2013, and amendments to the special permits legalizing the expansion of the PCE space; and

WHEREAS, a public hearing was held on these applications on February 26, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

WHEREAS, the subject site is comprised of two contiguous tax lots—tax lot 14, bound by Flatbush Avenue to the northeast and Sterling Place to the southwest, partially located within an R7A (C2-4) zoning district and partially located within an R7B zoning district (BSA Cal. No. 336-98-BZ) and tax lot 19, located on the northwest corner of Flatbush Avenue and Sterling Place, in an R7A (C2-4) zoning district (BSA Cal. No. 337-98-BZ), in Brooklyn; and

WHEREAS, the site has approximately 302 feet of frontage along Flatbush Avenue, 251 feet of frontage along Sterling Place, approximately 21,150 square feet of lot area (12,325 square feet on tax lot 14 and 8,825 square feet on tax lot 19), and each tax lot is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within a portion of the second floor (4,794 square feet) of the building on lot 14 and on portions of the cellar (2,697 square feet), first floor (3,144 square feet) and second floor (8,197 square feet) of the building on tax lot 19; and

WHEREAS, the Board has exercised jurisdiction over the subject tax lots since November 23, 1999, when, under the subject calendar numbers, the Board granted special permits to permit, in a then R6B (C2-4) zoning district, the

MINUTES

operation of a proposed physical culture establishment (“PCE”) on the second floor of adjacent buildings located on tax lots 14 and 19 to be used as a single project on condition that all work substantially conform to the plans, as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the hours of operation of the PCE be as follows: Monday through Friday, 6:00 a.m. to 11:00 p.m., and, Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; fire prevention measures be maintained in accordance with BSA-approved plans; the term of the special permit be for ten (10) years, expiring November 23, 2009; the premises remain graffiti free at all times; all signage comply with the Zoning Resolution; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, that a new certificate of occupancy be obtained within two (2) years, by November 23, 2001; and

WHEREAS, on August 11, 2009, under the subject calendar numbers, the Board waived its Rules of Practice and Procedure, reopened and amended the resolutions to legalize the use of the cellar space and the extension of the PCE use on the first floor from 629 square feet of floor area to 2,515 square feet of floor area in the building located on tax lot 19, extend the terms for a period of ten (10) years, to expire on November 23, 2019, extend the time to obtain certificates of occupancy to February 11, 2010, and reflect a change in operator to Crunch Fitness, on condition that the use and operation of the site substantially conform to approved plans; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; DOB review egress for compliance with all relevant regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approvals be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, that the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans(s)/configuration(s) not related to the relief granted; and

WHEREAS, on June 8, 2010, under the subject calendar numbers, the Board waived its Rules of Practice and Procedure, reopened and amended the resolutions to extend the time to obtain a certificate of occupancy to June 8, 2011, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; DOB review egress for compliance with all relevant regulations; all conditions from prior resolutions not specifically waived by the Board

remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, that the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans(s)/configuration(s) not related to the relief granted; and

WHEREAS, by letter dated February 2, 2011, under BSA Cal. No. 337-98-BZ, the Board permitted a change of use in the designation of the cellar of the building located on tax lot 19 from PCE use to storage space and accessory uses, and modifications to the interior layout of the cellar and first floor, including the elimination of the lift between floors, on condition that the DOB ensure compliance with all applicable provisions of the Zoning Resolution, Building Code or any other relevant law; specifically, the Board requested that the DOB review the proposed plans for compliance with Local Law 58/87;

WHEREAS, on September 11, 2012, under the subject calendar numbers, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the time to obtain a certificate of occupancy to September 11, 2013, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; DOB review egress for compliance with all relevant regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the previous term of the special permit and time to obtain a certificate of occupancy having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rules §§ 1-07.3(d)(2) and 1-07.3(b)(2) to permit the filing of these applications more than 30 days after the expiration of the time to obtain a certificate of occupancy, and more than one (1) year before the expiration of the term; and

WHEREAS, the applicant represents that no change in ownership or operation are proposed and that Crunch continues to operate the subject PCE, which continues to meet the special permit findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the applicant represents that delays in obtaining a certificate of occupancy were the result of a new project architect, corporate restructuring of Crunch, and issues associated with the PCE being located over two tax lots; the applicant anticipates it will obtain a certificate of

MINUTES

occupancy within one (1) year of the Board's grant;

WHEREAS, the applicant also requests an amendment to reflect an extension of the PCE into areas of the cellar (from 2,697 square feet to 5,129 square feet) and first floor (from 3,144 square feet to 5,434 square feet) of the building located on tax lot 19 and first floor (4,794 square feet) of the building located on tax lot 14; and

WHEREAS, by letter dated February 25, 2019, the Fire Department states that, on September 20, 2018, an inspection was performed by the Bureau's Licensed Public Place of Assembly ("LPPA") unit and violations were issued for failure to maintain the fire alarm system and failure to obtain a certificate of operation; at the time of inspection, the fire alarm panel showed a trouble signal in the system; a review of DOB Building Information System shows no public assembly applications have been filed to date at either building; the fire alarm and sprinkler systems were inspected and tested satisfactory to the Department standards, with the exception of maintenance records not being provided; and the Department has no objection to the Board rendering a decision on this application because the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, at hearing, the Board expressed concern with regards to the ADA-accessibility of the PCE space over two (2) tax lots; and

WHEREAS, the applicant represented that there are three (3) lifts within the site and the that cellar space is classified as non-occupied space, therefore, ADA access to that level is not required; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that the requested amendment, a ten (10) year extension of the term of the special permit, and an 18-month extension of time to obtain a certificate of occupancy are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rules §§ 1-07.3(d)(2) and 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 23, 1999, as amended through September 11, 2012, so that, as amended, this portion of the resolution reads: "to permit an extension of the PCE on the cellar level and first floor of the subject site, to grant an extension of the term of the variance for a term of ten (10) years, to expire on November 4, 2028, and an extension of time to obtain a certificate of occupancy for 18 months, to expire on August 26, 2020, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked 'Received November 8, 2019'-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 23, 2029;

THAT there shall be no change in ownership or operating control of the PCE without prior application to

and approval from the Board;

THAT the hours of operation of the PCE shall be as follows: Monday through Friday, 6:00 a.m. to 11:00 p.m., and, Saturday and Sunday, 7:00 a.m. to 10:00 p.m.;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar numbers ("BSA Cal. No. 336-98-BZ and 337-98-BZ") shall be obtained within 18 months, by August 26, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

2016-4141-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 30 Park Place Hotel LLC, owner; Four Seasons Hotel New York Downtown, lessee.

SUBJECT – Application July 27, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Four Seasons Hotel New York Downtown) on a portion of the first and third floors of a mixed-use hotel and residential building. The amendment seeks to permit the expansion of the use include an existing accessory fitness center, dance studio and pool on the third-floor level for a total of 18,980 square feet. C5-3 (LM) zoning district.

PREMISES AFFECTED – 27 Barclay Street, Block 123, Lot(s) 1101-1260, 3, 18, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Deputy Borough Commissioner, dated August 21, 2018, acting on Department of Buildings (“DOB”) Application No. 110089779, reads in pertinent part:

ZR 73-36, ZR 32-10: Expanding the area of an existing Physical Culture Establishment is not permitted, as of right, it is contrary to ZR 32-10 and requires BSA special permit, pursuant to ZR 73-36; and

WHEREAS, this is an application for reopening and an amendment of a special permit, previously granted pursuant to ZR § 73-36, to permit an expansion of the physical culture establishment (“PCE”) space on the third floor of an existing building; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

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

WHEREAS, the site is located on the northeast corner of Barclay Street and Church Street, in a C5-3 zoning district, in the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 148 feet of frontage on Church Street, 201 feet of frontage on Barclay Street, 197 feet of frontage on Park Place, 29,125 square feet of lot area, and is occupied by a 70-story with cellar mixed-use residential and commercial hotel building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 14, 2017, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE on portions of the first and third floor of the subject building on condition that all work substantially conform to plans filed with the application; the term of the grant be for ten (10) years, expiring February 14, 2027; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum 3’-0” wide exit pathways be provided leading to the required exits and that pathways be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—be installed in the entire PCE space; Local Law 58/87 shall be complied with as approved by DOB; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within

four (4) years, by February 14, 2021; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the applicant now seeks an amendment to permit an expansion of the PCE on the third floor, resulting in an increase of 12,681 square feet of floor area; and

WHEREAS, the applicant represents that the proposed amendment would allow the PCE to expand to include an existing fitness center, dance studio, and pool; and

WHEREAS, specifically, the applicant proposes to expand into adjacent space on the third floor, maintaining the 2,971 square feet of floor area on the first floor, and increasing the floor area on the third floor from 3,571 square feet to 16,252 square feet of floor area; and

WHEREAS, by letter dated December 29, 2018, the Fire Department confirms that the premises are protected by a combination fire suppression system and fire alarm system, that has been inspected and tested by units of the Bureau of Fire Prevention and are operational, and that the Fire Department has no objection to the application; and

WHEREAS, at hearing, the Board requested evidence of licenses for massage therapists providing massage services within the PCE; and

WHEREAS, in response, the applicant provided copies of current massage therapy license registration information for the massage therapists of the subject PCE; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment, permitting an extension of the PCE space on the third floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 13, 2010, so that as amended the resolution reads: “to reflect a change in the interior layout of the PCE on third floor such that the PCE will now occupy 2,971 square feet of floor area on the first floor and a total of 16,252 square feet of floor area on the third floor, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received September 27, 2018’-One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire February 14, 2027;

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

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

THAT an approved interior fire alarm system—

MINUTES

including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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

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

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2016-4141-BZ”) shall be obtained within one (1) year, by February 26, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

813-87-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 110 BP Property LLC, c/o Hidrock Properties, owners; TSI Cobble Hill LLC dba New York Sports Club, lessee.

SUBJECT – Application August 28, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) which expired on April 12, 2018; Amendment to request a change in hours of operation; Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for decision, hearing closed.

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group (“UG”) 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for adjourned hearing.

MINUTES

231-14-BZ

APPLICANT – Bryan Cave Leighton Paisner, for Orangetheory Fitness, owner; OTF Man One LLC c/o dba Orange Theory Fitness, lessee.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Orangetheory Fitness) within a portion of an existing commercial building which expired on April 12, 2018. C6-3X zoning district.

PREMISES AFFECTED – 124 West 23rd Street, Block 798, Lot 7507, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NG Kingswood Center, LLC, owner; TSI Midwood LLC dba New York Sports Club, lessee.

SUBJECT – Application February 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) on portions of the first and second floors of a three-story commercial building which expired on August 1, 2017; Waiver of the Board’s Rules. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, Block 6777, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2016-4296-A thru 2016-4298-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Galaxy Construction Services, Corp., owners.

SUBJECT – Application November 3, 2016 – Proposed enlargement of an existing one-family home which is within the unbuilt portion of the mapped street contrary to General City Law 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238 Schley Avenue and 580 Clarence Avenue, Block 5490, Lot(s) 7, 110, 111, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 7, 2016, acting on Department of Buildings (“DOB”) Application No. 220552177 (3236 Schley Avenue) reads in pertinent part:

The proposed extension is located within the bed of a mapped street contrary to section 35 of the general city law therefore, approval from the board of standards and appeals is required; and

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 7, 2016, acting on DOB Application Nos. 220547549 (3238 Schley Avenue) and 220547843 (580 Clarence Avenue) read in pertinent part:

The proposed N.B. construction is located within the bed of a mapped street contrary to section 35 of the general city law therefore, approval from the board of standards and appeals is required; and

WHEREAS, this is an application to permit construction of buildings within the bed of a mapped street, contrary to General City Law (“GCL”) § 35; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, with continued hearings on December 12, 2017, June 26, 2018, and February 26, 2019, and then to decision on that date;

WHEREAS, Chair Perlmutter, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located at the intersection of Schley Avenue and Clarence Avenue, in a C3A zoning district, in the Bronx; and

WHEREAS, the site has approximately 97 feet of frontage along Schley Avenue, 15,572 square feet of lot area and is currently occupied by a single-family home; and

WHEREAS, the westernmost portion of the site is located within the bed of Shore Drive, a street mapped to a width of 100 feet, but unimproved and not in use; and

WHEREAS, the applicant proposes to subdivide the existing lot into three zoning lots—Tentative Lots 7, 110 and 111—and to enlarge the existing one-family dwelling, located on Tentative Lot 7 and within the bed of a mapped, but unimproved portion of Shore Drive, with a second floor and to develop a two-story two-family dwelling on each of Tentative Lots 110 and 111; and

WHEREAS, the applicant submits that the proposed enlargement and new two-family dwellings will comply and conform with all applicable provisions of the Zoning Resolution, including but not limited to those relating to flood, resilience, and required off-street accessory parking; and

WHEREAS, by letter dated November 23, 2016, the New York City Department of Environmental Preservation (“DEP”) states that, based on DEP maps, there are no existing sewers or water mains in the bed of Shore Drive at the subject location; there is an existing 84-inch by 54-inch combined sewer and 8-inch diameter water main in the bed of Schley Avenue between Clarence Avenue and Wilcox Avenue; that Amended Drainage Plan No: 45D (13) & 45C (20), Sheet 8 of 8, dated March 16, 1983, shows a 12-inch diameter sanitary

MINUTES

sewer and 15-inch diameter storm sewer in the bed of Shore Drive between Clarence Avenue and Wilcox Avenue; and requested that the applicant submit a plan/survey, signed and sealed, showing the 35-foot wide sewer corridor in the bed of Shore Drive for the installation, maintenance and/or reconstruction of the future sewers and show distances from the westerly lot lines of Tentative Lots 110 and 111 to the existing 84-inch by 54-inch combined sewer and 8-inch diameter water main in Schley Avenue; and

WHEREAS, the applicant subsequently revised the site plan to indicate the 35-foot wide sewer corridor and show distances from the westerly lot lines of Tentative Lots 110 and 111 to the combined sewer and water main located in Schley Avenue; and

WHEREAS, by letter dated December 27, 2018, DEP states that the amending of the drainage plan for the subject development is feasible and that the subject application may proceed; and

WHEREAS, by letter dated December 16, 2016, the New York City Department of Transportation (“DOT”) states that the improvement of Shore Drive at the subject location, which would involve the taking of a portion of Block 5490, Lots 7 and 107, is presently not included in DOT’s Capital Improvement Program, though this does not preclude a change in the program in the future; and that, according to the Bronx Borough President’s Topographical Bureau, Shore Drive at this location is mapped at 100 feet and the City does not have title to it and both Schley and Clarence Avenues are mapped to widths of 60 feet and their titles are, indeed, vested with the City; and

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

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

Therefore, it is Resolved, that the Board modifies the decisions of the Queens Borough Commissioner, dated October 7, 2016, acting on Department of Buildings Application Nos. 220552177, 220547549 and 220547843 by the power vested in it by Section 35 of the General City Law to grant these appeals, limited to the decisions noted above *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received February 26, 2019”-Two (2) sheets; and *on further condition*:

THAT DOB shall review compliance of the location of the proposed dwellings and enlargement with applicable front yard requirements as no bulk waivers have been requested, reviewed or granted by the Board;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by February 26, 2023;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution;

THAT certificates of occupancy, indicating these

approvals and calendar numbers (BSA Cal No. 2016-4296-4298-A), shall be obtained within four (4) years, by February 26, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – Application filed pursuant to §310 of the Multiple Dwelling Law (“MDL”) requesting to vary §211 of the MDL to allow for the partial one story vertical enlargement of an existing tenement building. R8B zoning district.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 30, 2016, acting on DOB Application No. 122232137 reads in pertinent part:

Proposed vertical enlargement to Old Law Tenement dwelling is not permitted as stated in MDL 211.1: ‘no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;’ and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310 to permit, on a site located within an R8B zoning district, a one-story vertical enlargement of a five-story plus basement and cellar multiple dwelling contrary to MDL § 211(1); and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, with continued hearings on August 21,

MINUTES

2018, November 8, 2018, and January 15, 2019, and then to decision on February 26, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta conducted inspections of the site and surrounding area; and

WHEREAS, the subject site is located on the south side of East Third Street, between First Avenue and Second Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along East Third Street, 101 feet of depth, 7,544 square feet of lot area and is occupied by a five-story plus basement and cellar multiple dwelling; and

WHEREAS, the applicant states that the building, a non-fireproof structure constructed in as late as the 1920s, contains approximately 20 residential units—two residential units in the basement, two residential units on the first floor and four residential units on the second through fifth floors—and approximately 14,572 square feet of floor area; and

WHEREAS, the applicant initially proposed to construct a partial sixth-story containing approximately 808 square feet of additional floor area, converting two simplex apartments located on the fifth floor (Units 6A and 6B) into duplexes, and that will be set back 15 feet from the existing street wall and increase the total height of the building from 59'-1" to 74'-6" and increase the floor area ratio ("FAR") from 1.93 to 2.04; and

WHEREAS, the owners of Unit 6B subsequently requested the removal of the proposed enlargement previously allocated to their unit and the application was revised to propose the addition of 493 square feet of floor area as a penthouse to Unit 6A, increasing the FAR of the existing building to 2.00; and

WHEREAS, at the subject site, the maximum residential floor area ratio ("FAR") permitted is 4.0 (30,176 square feet of floor area) pursuant to ZR § 23-153 and a maximum front wall height of 60 feet and maximum height of 75 feet are permitted pursuant to ZR § 23-632; and

WHEREAS, pursuant to MDL § 211(1):

No tenement shall be increased in height so that its height shall exceed by more than one-half the width of the widest street upon which it stands. Except as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date; and

WHEREAS, East 3rd Street has a width of 60 feet, thus, pursuant to MDL § 211(1), the maximum building height permitted at the subject site is 90 feet, however, the enlargement of the subject building with an additional story does not comply with that section, accordingly, the applicant seeks the subject relief; and

WHEREAS, MDL § 310(2)(a)(1) states:

Where the compliance with the strict letter of this chapter causes any practical difficulties or any unnecessary hardships the [Board of Standards and Appeals] shall have the power, on satisfactory proof at a public hearing, provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done, to vary or modify any provision or requirement of this chapter, or of any rule, regulation, supplementary regulation, ruling or order of the department with respect to the provisions of this chapter, as follows:
a. For multiple dwellings and buildings existing on July first, nineteen hundred forty-eight, in cities with a population of one million or more . . . provisions relating to: (1) Height and bulk [. . .]; and

WHEREAS, the subject building having been constructed prior to July 1, 1948, and MDL § 211(1) relating, as it does, to height, the Board has the authority to vary or modify that provision pursuant to MDL § 310(2)(a)(1); and

WHEREAS, the applicant submits that practical difficulty and unnecessary hardship would result from strict compliance with MDL § 211(1), specifically, that provision prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, the applicant represents that MDL § 211(1) prohibits any vertical enlargement and horizontal enlargement of the building is impracticable because a rear yard with a minimum depth of 30 feet is required at a site, pursuant to ZR § 23-47, and the existing rear yard is 32'-4.25"; the applicant notes, further, that the enlarged building will still utilize approximately 50 percent of the floor area permitted in the subject zoning district; and

WHEREAS, with regards to the finding that the proposed enlargement maintains the spirit and intent of the Multiple Dwelling Law, preserves public health, safety and welfare and does substantial justice, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire . . ." and avers that the proposal includes setting the partial sixth story back 15 feet from the existing street wall, diminishing the perception of the story from the street and ensuring adequate light and air to that living spaces, as well as various fire safety measures that will significantly improve the fire safety of the existing building, including (1) the outfitting of all common areas of the building and the cellar with sprinklers, (2) providing a second layer of Type-X Fire Code gypsum board to the underside of all stairs and replacing existing materials at stair treads and landings with non-combustible materials, (3) providing two-hour fire-rated wall construction to existing basement level public hall, (4) providing two layers of 5/8-inch gypsum board at the cellar ceiling, (5) ensuring 1-1/2 hour rated assembly self-closing doors at all apartment entrances and the door to the roof, (6)

MINUTES

maintaining hard-wired smoke and carbon dioxide detectors with battery backup in all apartments, (7) constructing the penthouse addition with fire-proof construction pursuant to the New York City Building Code, (8) replacing any doors determined by the Fire Department to have inadequate fire rating with a 1-1/2 hour rated door and (9) replacing any smoke detector determined to not be hard-wired to be replaced with a hard-wired smoke detector; and

WHEREAS, in response to the Board's concerns regarding the fire-rating and self-closing nature of the existing apartment doors, the applicant obtained access to 12 of the other 19 units in the building, determined that they were 1-1/2 hour rated metal doors and that many of them were self-closing, but their mechanisms had weakened over time, therefore the applicant proposes to replace all of the self-closing mechanisms on all unit entry doors in the subject building; and

WHEREAS, with regards to the status of smoke detectors located in individual units, the applicant submits that three of the inspected units do not contain smoke detectors attached to in-unit electrical boxes and that the subject proposal includes the installation of new smoke detectors in Units 2A, 4C and 4D, as indicated on the plans; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated April 24, 2018, the Fire Department states that an application must be filed with the Manhattan office of the Department of Building for a new sprinkler system; once the application is approved and permitted, work is to be performed by a licensed master plumber or a licensed master fire suppression piping contractor and inspected or self-certified and a Letter of Completion obtained, and, based on the information provided, has no additional comments or recommendations relative to this application; and

WHEREAS, by subsequent letter, dated January 22, 2019, the Fire Department states that a joint inspection of the premises was performed with the Board's Compliance Officer on June 18 to verify the exit passageway from the rear of the building in response to a comment at hearing that the Department would be unable to access the rear of the premises and tenants would be unable to exit in the event of emergency if the proposed penthouse is constructed and confirms that access from the rear yard to the side yard and to East 3rd Street has been provided and that tenants and the Fire Department can use the rear and side yards in the event of an emergency, therefore, the Department has no objection to this application; and

WHEREAS, the Board was in receipt of fourteen letters in objection to the subject application from owners of other condominium units in the building citing concerns that the proposed enlargement would block access between the front and back of the roof and access to the bulkhead door on the roof the leads to the central staircase; that the proposed fire safety improvements will be costly, time-consuming and

disruptive to other unit owners; that the proposed roof plan violates certain private agreements; that the application was not filed on behalf of all of the condominium owners of the building and that it is unjust for other unit owners to be responsible for the cost of the herein proposed fire safety improvements; and

WHEREAS, several condominium owners also appeared at public hearing and provided testimony in opposition to the subject application reiterating their concerns about the cost of the proposed improvements to the building being the responsibility of all unit owners, the fire-rating of apartment entry doors; the existence of a roof owner's agreement that allegedly prohibits the construction of the penthouse in the size and location herein proposed and suggesting that a consensus among all owners should have been required prior to the filing of this application; and

WHEREAS, the applicant clarified that the subject application was revised to be filed on behalf of the owner of Unit 6A alone, but with the authorization of the building's condominium board; that the revised proposed penthouse addition does not impede access to or egress from the roof; and that the owner of Unit 6A will bear the full costs of construction and building improvements without requiring other owners of other condominium units in the building to contribute; and

WHEREAS, the applicant further explained that the condominium board cannot approve alterations to the subject building or to an individual unit until a formal request, including a full set of construction plans which are costly to produce and futile to create prior to obtaining approval from his Board for construction contrary to the Multiple Dwelling Law, is submitted for consideration by the condominium board, which will not occur until the applicant can provide the condominium board with approval of the subject application; and

WHEREAS, by letter dated January 5, 2018, the President of the Board of Managers of 72-74 East 3rd Street Condominium states that the building's Board of Managers authorized the filing of the subject application on behalf of the owners of Unit 6A and clarifies that such authorization to file the revised application, proposing only the enlargement of that unit, "does and shall not be deemed to constitute any Condominium or Board consent, approval, permission or authorization, nor any waiver with respect to the subject matter of the application or any terms therein [and t]he Condominium reserves its rights at law and pursuant to its governing documents to conduct a full review subject to the consent of the Board of Managers, or any proposed alterations"; and

WHEREAS, by separate letter dated August 2, 2018, the 72-74 East 3rd Street Condominium Board of Managers states that it "will not review, decide nor take any position with respect to the pending BSA Application without first knowing that the BSA will approve some or all of the applicant's proposed development" and that the condominium board "will not be prejudiced or influenced by any BSA approval . . . any BSA approval cannot and will not be leveraged against the

MINUTES

Condominium Board’s alteration review and consent rights under its governing documents”; and

WHEREAS, this Board notes that its decision on this application is solely an exercise of its discretion under the Multiple Dwelling Law, is not made in consideration of its compliance with any private contracts or agreements that may or may not be in force and/or bind the subject applicant with regards to alterations of the subject building and is not intended as an order or requirement to complete any of the construction permitted pursuant to its decision, but rather, if the proposed enlargement is, in fact, pursued, such enlargement must comply as approved herein; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height requirements of MDL § 211(1) 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)(1) and that the requested variance of the height requirements of MDL § 211(1) is appropriate, with certain conditions set forth below.

Therefore, it is Resolved, that the decision of the Department of Buildings, dated November 30, 2016, is *modified* and that this application is *granted*, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received February 7, 2019"-Twelve (12) sheets; and on further condition:

THAT all common areas of the building and the cellar shall be fully sprinklered;

THAT a second layer of Type-X Fire Code gypsum board shall be provided to the underside of all stairs and existing materials at stair treads and landings shall be replaced with non-combustible materials;

THAT two-hour fire-rated wall construction shall be provided to existing basement level public hall;

THAT two layers of 5/8-inch gypsum board shall be provided at the cellar ceiling;

THAT all apartment entrances and the door to the room shall be 1-1/2 hour rated assembly self-closing doors;

THAT all apartments shall contain hard-wired smoke and carbon dioxide detectors with battery backup;

THAT the penthouse addition shall be of fire-proof construction pursuant to the New York City Building Code

THAT any doors determined by the Fire Department to have inadequate fire rating shall be replaced with a 1-1/2 hour rated door;

THAT any smoke detector determined to not be hard-wired shall be replaced with a hard-wired smoke detector;

THAT new hard-wired smoke detectors shall be installed in Units 2A, 4C and 4D;

THAT the self-closing mechanism shall be replaced on all apartment entry doors;

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

related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; specifically, no relief has been granted with respect to any provision of the Building Code; and

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

2017-248-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district.

PREMISES AFFECTED – Long Island Expressway and 74th Street, Block 2814, Lot 4, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 26, 2017, acting on a registration application for an arterial advertising sign, reads in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for the registration of the above-referenced arterial advertising sign. This sign was remanded to the Department for reconsideration of Arterial Registration in by the Honorable Michael D. Stallman in Index No. 100394/2013. You assert that “the signage was legally established as of 1979 pursuant to the then applicable Zoning Resolution Section 42-53 (now Section 42-55).”

Unfortunately, the documentation submitted in support of your assertion, including a prospective lease from 1976 indicating that the sign is ‘to be’ built and various documents from the 1980s are inadequate to support the claim that the sign was being used for advertising as of November 1, 1979. Furthermore, based on the evidence provided, you have no established that the abo e

MINUTES

sign is: 1) exempt from the City's regulations; 2) allowed as-of-right; or, 3) legally established as a nonconforming use. As such, the sign is rejected from registration and will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York ("ZR" or the "Zoning Resolution") and Section 666(6)(a) of the New York City Charter, brought on behalf of Outfront Media LLC ("Appellant"), alleging errors in the above determination pertaining to whether an advertising sign at the subject site is exempt from the City's regulations, permitted as of right or lawfully established as a non-conforming use under the Zoning Resolution; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, and then to decision on February 26, 2019; and

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

WHEREAS, the subject site is located at the intersection of Long Island Expressway and 74th Street, located partially in an R4-1 zoning district, an R4 zoning district, an M1-1 zoning district and an M3-1 zoning district, in Queens; and

WHEREAS, the subject site is owned by CSX Transportation, Inc. and is occupied by a set of railroad tracks; and

WHEREAS, the subject appeal concerns a double-faced advertising sign, approximately 14 feet in height and 48 feet in width on each sign face, located at the subject site on a pole structure with a height of 70 feet within 200 feet and within view of the Queens Midtown Expressway, a designated arterial highway; and

WHEREAS, the Board previously considered advertising signs at the subject site in a prior appeal, under BSA Calendar Numbers and 134-12-A and 135-12-A, which upheld DOB's sign-registration rejection for the subject sign; and

WHEREAS, in *CBS Outdoor, Inc. v. City of New York*, 50 Misc. 3d 283, 305–308 (Sept. 8, 2015), the Supreme Court of the State of New York held that "the local laws and regulations with respect to outdoor advertising on CSXT property or rights of way are not preempted by" the federal Interstate Commerce Commission Termination Act of 1995; that zoning regulations are "applicable to the outdoor signs on CSXT property because these outdoor signs are located on zoning lots, i.e., lots of record on December 15, 1961"; that the City is not "precluded from enforcing its Zoning Resolution with respect to those signs"; and that the Board's resolution, "which upheld the DOB's rejection of the registration of these outdoor signs, and DOB's rejection of the applications for sign registration of these signs on CSXT property, must be vacated to permit the matter to be remanded to DOB to consider whether these signs have the status of legal non-conforming use"; and

WHEREAS, Appellant commenced this appeal on August 28, 2017; and

WHEREAS, Appellant states that the subject sign constitutes a lawful non-conforming use and should be registered as a lawful arterial-advertising sign; and

WHEREAS, Appellant states that the subject sign was established as a lawful non-conforming use as of November 1, 1979, under ZR § 42-55, as evidenced by the following: "a 1976 license agreement and filing document from 1975, together with the 1980 certificate of electrical inspection, the 1980 tax photograph, 1981 DOB inspection report, 1986 DOB inspection photographs and 1995 photograph"; and

WHEREAS, Appellant alleges that, as of November 1, 1979, the subject sign conformed to applicable zoning regulations for surface area, height and length; and

WHEREAS, Appellant states that, since establishment of the use, the subject sign has continued to be used as an advertising sign from 1979 to the present, as "confirmed by a series of photographs and documents referenced above"; and

WHEREAS, in support of this contention, Appellant also provided a timeline summarizing evidence alleged to be from the years 1975, 1976, 1979, 1980, 1981, 1986, 1995, 2007, 2011, 2013, 2017 and 2018 that purports to demonstrate the continuous presence of the subject sign used for advertising; and

WHEREAS, in response, DOB refutes that the evidence furnished by Appellant demonstrates that the subject sign was constructed prior to November 1, 1979, noting that a 1976 license agreement indicates that signs were "to be" erected; and

WHEREAS, DOB also furnished photographs from the New York State Department of Transportation from 1978, historic aerial photographs from 1980 and 1986 DOB records pertaining to electric signs at the subject site—which demonstrate that the subject sign is a different structure from the sign structure that existed on November 1, 1979; and

WHEREAS, DOB submits that, instead, the subject sign is a different structure (notably with respect to its height and width) that was constructed between 1996 and 1999 pursuant to Application Nos. 400558936, 400559212 and 400559203, which pertained to the construction of accessory business signs, and DOB submitted copies of the attendant applications, including drawings with a front elevation and site plan; and

WHEREAS, in response, Appellant requests withdrawal of this appeal.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *permit* this appeal to be *withdrawn*.

Adopted by the Board of Standards and Appeals, February 26, 2019.

MINUTES

2017-263-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Westbroad Company, LLC, owner; Outfront Media, LLC, lessee.

SUBJECT – Application September 7, 2017 – Appeal from Department of Buildings determination that advertising sign is not entitled to continuing non-conforming use status at current size due to a purported gap in evidence of continued use, ignoring the Department's own prior concession of continued use.

PREMISES AFFECTED – 62-66 West Broadway, Block 132, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 10, 2017, acting on Sign Application No. 122796420, reads in pertinent part:

The request, to accept the submitted documentation as evidence that the 792 square feet non-illuminated advertising wall sign is a lawful non-conforming use that may continue on the northern façade of the premises, currently located in a C6-2A zoning district, is hereby denied. . . .

In this ZRD1, the applicant requested confirmation that the existing non-conforming flex sign is 792 square feet in area and not the smaller 525 square foot area stated in the 1990 painted wall Sign application No. 100084837, and that the 792 square foot sign may continue pursuant to ZR 52-61.

To demonstrate that the flex advertising sign was a lawful use on June 28, 1995, the date of the rezoning, the applicant submits the following:

1. an undated photograph of the wall sign on the northern façade of the premises showing an advertisement for “Guys and Dolls” and “The Who’s Tommy”; and
2. computer screenshots from Wikipedia.org’s website showing the “Guys and Dolls” performance dates from April 14, 1992 to January 8, 1995, and “The Who’s Tommy” April 22, 1993 performance date.

To demonstrate that the flex advertising sign at the premises has not discontinued for two or more years, the applicant submits the following evidence, as follows:

1. A 1981 tax photograph, which is too dark to ascertain details in the photograph, including the presence of a wall sign on the premises;

2. The aforementioned photograph of the “Guys and Dolls” and “The Who’s Tommy” sign, which was on the premises’ northern facade between April 14, 1992 and January 8, 1995;
3. An October 31, 2005 photograph from propertyshark.com’s website showing copy on the sign;
4. A September 5, 2007 photograph showing copy on the sign;
5. A May 4, 2006 photograph showing copy on the sign;
6. A June 6, 2008 photograph showing copy on the sign;
7. A January 27, 2009 photograph showing copy on the sign;
8. A circa 2010 photograph showing copy on the sign;
9. A February 3, 2011 photograph showing copy on the sign;
10. A July 2012 photograph from Google Maps’ website showing copy on the sign;
11. A January 2013 photograph from Google Maps’ website showing copy on the sign;
12. An October 2014 photograph from Google Maps’ website showing copy on the sign;
13. Several photographs dated January 6, 2016 showing copy on the sign; and
14. A sworn affidavit from Jeffrey Feldman, dated June 15, 2011, in which he attests that “[f]rom personal observation, [...] Seaboard, Vista and Van Wagner have continuously – with a gap of no longer than 2-3 months – placed advertising signage on the north wall of the Subject Premises; and that this advertising signage has always been the same dimensions as exist today.”

As the submitted photographic evidence does not demonstrate that the sign has not discontinued for two or more years because of the absence of photographic evidence between 1995 and 2005, the non-conforming sign’s use has discontinued and shall thereafter be used only for a conforming use pursuant to ZR 52-61.

Therefore, the applicant’s above stated request is hereby denied; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought on behalf of Westbroad Company, LLC (“Appellant”), alleging errors in the above determination pertaining to whether an advertising sign at the subject site is a lawful non-conforming use under the Zoning Resolution; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

MINUTES

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

WHEREAS, the subject site is located at the northwest corner of West Broadway and Murray Street, located in a C6-2A zoning district, in the Special Tribeca Mixed Use District, in Manhattan; and

WHEREAS, this appeal concerns an advertising sign with a surface area of 792 square feet (22 feet by 36 feet) located on the wall of a six-story, with cellar, commercial building; and

WHEREAS, Appellant commenced this appeal on September 12, 2017; and

WHEREAS, Appellant states that the subject sign constitutes a lawful non-conforming use because the subject site has been used continuously for advertising from 1990 to the present and that the subject sign became nonconforming in 1995 when the subject site was rezoned from an M1-5 zoning district to a C6-2A zoning district; and

WHEREAS, Appellant states that DOB has changed its determination with respect to the subject site, and DOB now concurs that Appellant's "evidence demonstrates that the sign displayed copy at the subject premises continuously" and "may hereafter continue at the present location"; and

WHEREAS, accordingly, Appellant requests withdrawal of this appeal.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *permit* this appeal to be *withdrawn*.

Adopted by the Board of Standards and Appeals, February 26, 2019.

2018-147-A

APPLICANT – Alexander Levkovich, for Yusupov Edward, owner.

SUBJECT – Application September 7, 2018 – Proposed development of a two (2) family detached residence not fronting on a legally mapped street contrary to General City Law 36. R3 zoning district.

PREMISES AFFECTED – 3805 Beach 38th Street, Block 7044, Lot 539, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 26, 2019.

205-15-A thru 214-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129th Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130,131, 132, 133,134, 135,136, 137, 138, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

MINUTES

ZONING CALENDAR

2016-4274-BZ

CEQR #17-BSA-032K

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 2016 – Special permit (§73-19) for a school (*Bnos Zion of Bobov*) (Use Group 3) to legalize its use on the first floor of an existing two-story building and to permit its use in the remainder of the existing two-story building and in the proposed enlargement contrary to use regulations (§42-00). Variance (§72-21) to enlarge the existing building by two additional stories contrary to rear yard requirements (§43-26). M1-2 zoning district.

PREMISES AFFECTED – 1411 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 29, 2017, acting on Alteration Application No. 321356215, reads in pertinent part:

1. Enlargement to the proposed Use Group 3 school is contrary to ZR 42-10.
2. The proposed enlargement does not comply with the rear yard requirements of ZR 43-26; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10, and under ZR § 72-21 to permit an enlargement of the school building that does not comply with rear yard requirements, contrary to ZR § 43-46; and

WHEREAS, this application has been brought on behalf of Bnos Zion of Bobov (the “School”), a private school, in conjunction with a variance application under BSA Calendar Number 2016-4339-BZ to permit the development of a seven-story, with cellar and sub-cellar, school building at 5018 14th Avenue, Brooklyn, comprised of Tax Lot 44, Tax Lot 46 and Tax Lot 49 on Block 5649; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with continued hearings on June 19, 2018, and December 11, 2018, and then to decision on February 26, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding

neighborhood; and

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

WHEREAS, the subject site is located on the west side of 39th Street, between 14th Avenue and 15th Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 80 feet of frontage along 39th Street, between 93 and 160 feet of depth, 10,268 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, the applicant proposes to enlarge the existing building for the School’s use with 31,470 square feet of floor area (3.06 FAR) and a rear yard depth of 10 feet for the two-story enlargement; and

WHEREAS, the applicant submits that, at the subject site, school use is not permitted under ZR § 42-10, and the two-story enlargement must have a rear yard with a minimum depth of 20 feet under ZR § 43-26; and

WHEREAS, ZR § 73-19 provides:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding *non-Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *street* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

MINUTES

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of "school" because it provides full-time day instruction and a course of study that meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the school, within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that, at the subject site, the School requires a development site that can accommodate a building with at minimum of 30,000 square feet of floor area and no more than seven stories; and

WHEREAS, in support of this contention, the applicant submitted a comprehensive study of the School's programmatic needs, demonstrating that the School requires two separate expansion sites (namely, the site located at 5018 14th Avenue and the subject site) in order to accommodate its projected increase in enrollment from 2,031 students to 3,362 students, necessitating an increase of approximately 120,000 gross square footage; and

WHEREAS, the applicant notes that the School currently faces programmatic deficiencies to be resolved by the School's proposed expansion with respect to the crowding of classrooms; the lack of any science laboratory or facilities devoted to home economics, sewing or cooking; insufficient faculty spaces with no conference rooms; and small library spaces and lacking support spaces for tutoring and occupational and physical therapy; and

WHEREAS, thus, the applicant has demonstrated that the School's stated requirements related to size and configuration are justified by the School's programmatic needs; and

WHEREAS, the applicant represents that the School has conducted an exhaustive search for potential expansion sites using the following criteria: suitability for a building with at least 30,000 square feet of floor area and no more than seven stories in height, as required by the School's

programmatic needs; and

WHEREAS, the applicant represents that the School considered sites located within an R6 zoning district, where the maximum permitted Floor Area Ratio is 4.8, and sites located within an R5 zoning district, where the maximum permitted Floor Area Ratio is 2.0; however, none of the sites have sufficient lot area to accommodate the School's search criteria; and

WHEREAS, thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, ZR § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant states that the subject site is in the immediate vicinity of an R6 zoning district boundary line and that the entire site is within 400 feet of said R6 zoning district, and notes that school uses are permitted as-of-right in R6 zoning districts; and

WHEREAS, in support of this contention, the applicant submitted a radius diagram and zoning map which reflect that the subject site is adjacent to an R6 zoning district; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, ZR § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that there are a number of automotive and manufacturing uses in the vicinity of the subject site but that, by proposing three-hour rated fireproof construction with composite window-wall noise attenuation of 28 dbA, the School will be adequately separated from these uses; and

WHEREAS, the applicant further notes that, with respect to soil vapor and potential vapor encroachment, coating the building slab with a liquid epoxy vapor barrier will prevent future soil vapor migration and that any other hazardous materials that may be present in the existing building materials will be subject to standard abatement procedures and remediated in accordance with applicable regulations; and

WHEREAS, the applicant states that, based on an assessment of the surrounding area, no significant adverse air quality impacts are expected; and

WHEREAS, the applicant studied sound levels between 70 dbA and 80 dbA, the proposed building has been designed to provide noise attenuation to reduce the interior sound levels by 28 dbA; and

WHEREAS, the Board finds that the conditions surrounding the site and the proposed building's use will adequately separate the proposed school use from noise,

MINUTES

traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; accordingly, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that, with respect to transportation, there would be no potential for significant adverse transportation impacts and, after evaluating safety conditions around the subject site, no pedestrian concerns were identified; and

WHEREAS, the applicant further notes that the School has requested a “no standing” zone between the hours of 7:00 a.m. and 7:00 p.m. to be provided in front of the subject site; that the School’s staff will employ two-way radio telecommunication devices to guide students to and from school buses; and

WHEREAS, the applicant also submitted an operational plan designed to ensure the safety of the School’s arrivals and departures including the following measures: placement of a crossing guard at the subject site; providing at least four teachers at the entrances and exits of the proposed building to escort students to and from school buses; coordinating with local businesses to ensure loading and unloading activities will be scheduled outside the hours of 9:00 a.m. and 4:00 p.m. when the School is in session; installation of protective bollards on the sidewalk to the east of the subject site to provide a physical barrier between pedestrians and vehicles; the implementation of a “no standing” zone for buses along the front of the subject site; and the off-site parking of school buses; and

WHEREAS, with respect to bus parking, the applicant submitted a parking lease to allow bus parking at 1453 62nd Street (Block 5727, Tax Lot 46), Brooklyn as well as an off-street bus parking restrictive declaration to be recorded against the property to ensure that at all times the School will provide off-street bus parking for all of its school buses, when not in use; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated November 28, 2018, DOT states that, with respect to the subject site, the School shall close unutilized existing curb cuts along the School’s proposed frontage, including an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet west of the School’s entrance, and an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet east of the School’s entrance, and that, upon approval of this application and near the end of construction, the School shall notify DOT so that DOT can determine if any additional traffic safety improvements or parking regulation changes are necessary, including the placement of appropriate school warning signage and school loading zones to be sited in accordance with DOT standards; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(d) are met; and

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

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, consistent with ZR § 72-21, the applicant submits that the School’s proposed building is necessary to accommodate the School’s programmatic needs and, as discussed above, submitted a study of the School’s programmatic needs, which require the following: both secular and religious educational spaces, including classrooms, specialized instructional spaces (including computer training, art, music, sewing and cooking), library resources, food service and space for public assemblies and administrative functions; the pairing of every two grades into a single academic unit under interrelated supervision; and conformance to planning standards and design guidelines for comparable educational facilities (including the provision of light and air to every classroom); and

WHEREAS, the applicant analyzed and detailed the deleterious effects that the complying building form would have on the School’s programmatic needs based on the school’s educational mission and projected occupancy; and

WHEREAS, the applicant notes that an as-of-right development would not meet the School’s programmatic needs because only 109 classrooms would be allowed, where 129 are required; only 15 of 16 classrooms would have light and air; and the classrooms would be of insufficient size; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the

MINUTES

School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, the applicant studied the surrounding area, noting that, as discussed above regarding the School's use, schools are permitted as of right in areas immediately surrounding the subject site; and

WHEREAS, the applicant notes that the subject site is characterized by a mix of residential, commercial and manufacturing uses and that there are other educational facilities in the vicinity; and

WHEREAS, the applicant represents that, with respect to the rear of the subject site, adjacent lots are occupied by commercial, manufacturing and automotive uses with a vacant lot to the north of the subject site; and

WHEREAS, the applicant further represents that none of the uses immediately adjacent to the surroundings site will be adversely affected by a reduction in the depth of the rear yard for the School's proposed enlargement; and

WHEREAS, with respect to the built form of the proposed building, the applicant notes that the façade is primarily composed of brick with the base faced with precast concrete; and

WHEREAS, with respect to refuse, the applicant submits that the School's proposed building will provide areas for refrigerated trash storage space located within the interior of the building; and

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

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools

constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA032K, dated July 12, 2018; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated February 23, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts on architectural or archeological resources; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Environmental Protection ("DEP") states that the March 2017 Revised Remedial Action Plan ("RAP") for 5018 14th Avenue is acceptable on condition that, at the completion of the project, a professional engineer certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and proof of installation of an engineering control system); and

WHEREAS, by letter dated August 9, 2017, DEP states that the February 2017 Remedial Closure Report for the subject site (1411 39th Street), which summarizes the remedial activities completed, which include the installation of a new concrete layer over the existing slab of the building's ground floor, ensuring that any compromise or cracks in the existing slab were either filled or covered with new concrete, the installation of an epoxy vapor barrier over the new concrete layer and the indoor air sampling using a photoionization detector, is acceptable and that DEP has no objection to the issuance of any permits or a certificate of occupancy for the subject site; and

WHEREAS, by letter dated November 14, 2018, DEP states that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; that, for 5018 14th Avenue, in order to attain an

MINUTES

indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation are required; and that, for the subject site (1411 39th Street), in order to attain an indoor noise level of 45 dBA within the enlarged building, a composite window-wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation are required; and

WHEREAS, by letter dated January 11, 2019, DOT states that, based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of 5018 14th Avenue (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of the subject site (1411 39th Street) (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because the subject site (1411 39th Street) is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at 5018 14th Avenue, teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school

safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19, 73-03 and 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to *permit*, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10, and under ZR § 72-21 to *permit* an enlargement of the school building that does not comply with rear yard requirements, contrary to ZR § 43-46; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 26, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the school building at 1411 39th Street shall have a rear yard with a minimum depth of 10 feet, as illustrated on the Board-approved drawings;

THAT the School shall not permit, at 5018 14th Avenue, any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts;

THAT a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

DECLARATION, made this _____ day of _____, 2019, by Bnos Zion of Bobov, hereafter referred to as the "Declarant" having an office at 5000 14th Avenue, Brooklyn, NY 11219.

WHEREAS, the Declarant operates a school at Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, hereinafter referred to as the "School Sites."

WHEREAS, the Declarant currently utilizes the parking lot located at Tax Block 5301, Lot 20, County of Kings, for the off-street storage of thirteen (13) school buses (the "Existing Bus

MINUTES

Lot”).

WHEREAS, the Declarant, commencing on or about September 1, 2019, will utilize the parking lot located at Tax Block 5727, Lot 46, County of Kings, for the off-street storage of its buses (the “Subsequent Bus Lot”).

WHEREAS, the Declarant has requested various approvals from the New York City Board of Standards and Appeals to construct and/or alter buildings located on the School Sites, under BSA Cal. Nos. 2016-4274-BZ and 2016-4339-BZ.

WHEREAS, the New York City Board of Standards and Appeals requires the execution and recording of this Declaration in connection with the off-street storage of the Declarant’s buses.

NOW, THEREFORE, in consideration of approvals by the New York City Board of Standards and Appeals, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, its successors and assigns that in the event that the Existing Bus Lot or the Subsequent Bus Lot are no longer available to Declarant, Declarant shall utilize an alternate lot at which the parking and storage of its thirteen (13) buses, or the total number of buses utilized by the Declarant at such time, is permitted in accordance with the applicable provisions of the Zoning Resolution of the City of New York;
2. The Declarant shall at no time utilize on-street parking spaces for the storage of any of its buses;
3. This Declaration may not be modified, amended or terminated without the prior written consent of the New York City Board of Standards and Appeals;
4. The covenants set forth herein shall run with the land of Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, and be binding upon and inure to the benefit of the Declarant their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of approvals by the New York City Board of Standards and Appeals, which may result in the revocation of a certificate of occupancy; and
6. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each

temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

THAT in order to attain an indoor noise level of 45 dBA within the building, a composite window–wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation shall be provided, as indicated on the Board-approved drawings;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2016-4274-BZ”), shall be obtained within four (4) years, by February 26, 2023;

THAT the School shall close unutilized existing curb cuts along the School’s frontage, including an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet west of the School’s entrance, and an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet east of the School’s entrance; near the conclusion of construction, the School shall notify the Department of Transportation so that the Department of Transportation can determine if any additional traffic safety improvements or parking regulation changes are necessary, including the placement of appropriate school warning signage and school loading zones to be sited in accordance with DOT standards;

THAT based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder’s Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of 5018 14th Avenue (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of the subject site (1411 39th Street) (the north side of 39th Street, approximately 5–10 feet east and west of the School’s entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because the subject site (1411 39th Street) is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School’s main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at 5018 14th Avenue, teacher monitors to be stationed along

MINUTES

the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 26, 2019.

2016-4335-BZ

CEQR#17-BSA-043Q

APPLICANT – Gerald J. Caliendo, RA, AIA, for 193 Street LLC, Joseph Atarien, President, owner.

SUBJECT – Application November 21, 2016 – Variance (§72-21) proposed construction of a two story, two family dwelling contrary to Floor Area Ratio and Maximum Lot Coverage (ZR 23-141), Number of Dwelling Units (ZR 23-22) and Front Yard (ZR 23-45). R3X zoning district.

PREMISES AFFECTED – 220-21 137th Avenue, Block 13112, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated November 9, 2016, acting on Department of Buildings (“DOB”) Application No. 421306919 reads in pertinent part:

The proposed construction of a 2 story, 2 family dwelling in an R3X zoning district is contrary to the following Z.R. Sections:

1. [. . .];
2. [. . .];
3. [. . .];
4. Proposed (1) front yard is contrary to ZR 23-45; and

WHEREAS, this is an application under ZR § 72-21 to permit, with an R3X zoning district, the construction of a detached two-family dwelling that does not comply with zoning regulations pertaining to front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2019, and then to decision on that date; and

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

WHEREAS, the subject site is located on the northwest corner of 137th Avenue and 220th Place, in an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 137th Avenue, 100 feet of frontage along 220th Place, 2,500 square feet of lot area and is currently vacant; and

WHEREAS, Community Board 13, Queens recommends disapproval of this application on the basis that the site is not clearly unique, and a two-family residence is not the minimum variance; and

WHEREAS, New York State Assemblywoman Alicia Hyndman submitted a letter in opposition to this application, citing the Community Board 13 public hearing on the application, at which residents expressed concerns about the

MINUTES

impact of the variance on current services and local parking; and

WHEREAS, New York State Senator Leroy Comrie and New York City Councilmember Donovan Richards submitted letters in opposition to this application, citing the Community Board's opposition to the application, particularly the request to waive front yard requirements; and

WHEREAS, Queens Borough President Melinda Katz recommends disapproval of this application on the basis that, without the required front yard, the proposed development would be out of character with neighboring homes and a single-family dwelling at the site would reduce the degree of non-compliance and better fit with the existing neighborhood character; and

WHEREAS, the applicant originally proposed to develop the site with a detached two-story two-family dwelling containing 1,980 square feet of floor area, a floor area ratio ("FAR") of 0.79, a building width of 22 feet fronting 137th Avenue, one front yard along 137th Avenue with a depth of 12'-9" and a detached one-car garage; and

WHEREAS, at the subject site, the maximum permitted FAR is 0.72 (1,800 square feet of floor area) (0.50 plus an increase of up to 20 percent provided that such increase in floor area is located directly under a flopping roof that rises at least three and one half inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five and eight feet and including up to 300 square feet if at least one enclosed accessory off-street parking space is provided in a garage located wholly or partly in the side lot ribbon) pursuant to ZR § 23-142; the maximum number of dwelling units is one pursuant to ZR § 23-22, and two front yards of at least ten (10) feet and 12'-9" are required pursuant to ZR § 23-45; and

WHEREAS, over the course of hearings, the proposal was revised to develop the site with a detached two-story two-family dwelling containing 1,674 square feet of floor area (0.67 FAR), a building width of 18 feet fronting 137th Avenue, a front yard of 12'-9" fronting 137th Avenue, a front yard of 4 feet fronting 220th Place and a detached one-car garage; thus, eliminating a waiver of ZR § 23-142 for floor area; and

WHEREAS, pursuant to ZR § 23-32, the minimum lot area and width for a two-family detached building at the subject site are 3,325 square feet and 35 feet, respectively, however, pursuant to ZR § 23-33, a two-family residence may be developed on a zoning lot with less than the prescribed minimum lot area or lot width if such zoning lot was owned separately and individually from all other adjoining tracts of land, both on the effective date of establishing the R3X zoning district on the zoning maps and on the date of application for a building permit; and, if developed as a two-family residence, meets the applicable density requirement of the zoning district in which such zoning lot is located; and

WHEREAS, the applicant submits that the subject site

was owned separately and individually from all other adjoining tracts of land on September 4, 2008, the effective date of the rezoning (C 080462 ZMQ) that changed the subject zoning district from R3-2 to R3X, and will be on the date of application for a building permit, and, further, that the proposed two-family residence meets the applicable density requirements, to wit, pursuant to ZR § 23-22, the maximum number of dwelling units at the site (equal to the maximum residential floor area permitted on the zoning lot divided by a factor of 1,000, with all fractions equal to or greater than three-quarters being considered one dwelling unit) is 2; and

WHEREAS, the applicant notes also that two-family detached residences (Use Group 2) are permitted in the subject zoning district as-of-right pursuant to ZR §§ 22-00 and 22-12; and

WHEREAS, accordingly, no waiver of ZR § 23-32 (Minimum Lot Area or Lot Width for Residences) or ZR § 23-22 (Maximum Number of Dwelling Units) has been sought in this application; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), that the narrowness of the lot, its vacancy and status as a corner lot, for which two front yards are required, are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant provided a study of the 91 lots developed with single- or two-family dwellings located within 400 feet of the subject site and located in an R3X zoning district (the "Study Area") demonstrating that two other lots (2 percent) had a width of 25 feet, a depth of 100 feet and are currently vacant; one of the two lots is an interior lot and the other is a corner lot like the subject site, but is distinguishable from the subject parcel because it is under common ownership with an adjacent tax lot; and

WHEREAS, the applicant additionally analyzed the 235 lots located within 800 feet of the subject site and within an R3X zoning district and identified 34 lots (14 percent) with a width of 25 feet or less that are developed with single- or two-family dwellings with building frontages that range from 12 to 23 feet and six lots (3 percent), all interior lots with lot widths of less than 25 feet, that are vacant, but all six of these lots are under common ownership with at least one adjacent tax lot; and

WHEREAS, the applicant additionally notes that, according to Department of Buildings and Department of Finance records and Sanborn fire insurance maps of the immediate area dating from 1901 through 2006, the site has never been developed or otherwise previously occupied by a building or other structure; and

WHEREAS, in light of the foregoing, the Board finds that the narrowness of the lot, its vacancy, status as a corner lot and history of ownership separate and apart from adjacent tax lots create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

MINUTES

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant submits that the subject proposal will not alter the essential character of the neighborhood, which consists of one- to two-story detached or semi-attached single-and two-family detached dwellings, many of which were constructed prior to 1961 that are noncompliant with bulk regulations applicable in an R3X zoning district and notes that the subject proposal was revised to provide a front yard fronting 220th Place; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant state that the revised proposal is the minimum relief required in satisfaction of ZR § 72-21(e); and

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA043Q, dated November 21, 2016; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R3X zoning district, development of a detached two-family dwelling that does not comply with zoning regulations pertaining to front yards, contrary to ZR § 23-45; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 7, 2019"-Thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: maximum building width of 18 feet fronting 137th Avenue; front yards with minimum depths of 12'-9" fronting 137th Avenue and four feet fronting 220th Place, as illustrated on the BSA-approved plans;

THAT the Board has not granted any waiver of ZR § 23-142 to permit excess floor area, accordingly, DOB shall verify compliance of bonus floor area in the attic and one-car garage with ZR § 23-142(a) and (c);

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy, indicating this approval and calendar number (i.e. "BSA Cal. No. 2016-4335-BZ") shall be obtained within four (4) years;

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

**2016-4339-BZ
CEQR #17-BSA-032K**

APPLICANT – Pryor Cashman LLP, for Bnos Zion of Bobov, owner.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit construction of a school (Use Group 3) (*Bnos Zion of Bobov*) contrary to underlying bulk requirements. R6 zoning district.

PREMISES AFFECTED – 5018 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 28, 2016, acting on New Building Application No. 321380233, reads in pertinent part:

The proposed building is contrary to:

1. Maximum allowable Floor Area (ZR 24-11)
2. Maximum allowable Floor Area Ratio (ZR 24-11)
3. Maximum allowable Lot Coverage (ZR 24-11)
4. Maximum Street Wall Height (ZR 24-522)
5. Setback Requirements (ZR 24-522)
6. Sky Exposure Plane (ZR 24-522)
7. Rear Yard Requirements (ZR 24-36); and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R6 zoning district, the development of a school building that does not comply with zoning regulations for floor area, lot coverage, street wall height, setbacks, sky exposure plane and rear yards, contrary to ZR §§ 24-11, 24-522 and 24-36; and

MINUTES

WHEREAS, this application has been brought on behalf of Bnos Zion of Bobov (the "School"), a private school, in conjunction with a special permit and variance application under BSA Calendar Number 2016-4274-BZ to permit the enlargement of a two-story school building at 1411 39th Street, Brooklyn, comprised of Tax Lot 3 and Tax Lot 71 on Block 5347; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with continued hearings on June 19, 2018, and December 11, 2018, and then to decision on February 26, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the northwest corner of 14th Avenue and 51st Street, in an R6 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 80 feet of frontage along 14th Avenue, 120 feet of frontage along 51st Street, 10,021 square feet of lot area and is occupied by an existing four-story building on Tax Lot 49 to be demolished; and

WHEREAS, the applicant proposes to develop a new building at the subject site for the School's use with 70,444 square feet of floor area (7.03 FAR), lot coverage of 95.3 percent (corner lot portion) and 100 percent (through lot portion), street wall height rising 94'-1" for seven stories, no setbacks along 14th Avenue or 51st Street, sky exposure plane of 0 and no rear yard; and

WHEREAS, the applicant submits that, at the subject site, floor area may not exceed 48,101 square feet (4.80 FAR) under ZR § 24-11; lot coverage may not exceed 70 percent (corner lot portion) or 65 percent (interior lot portion) under ZR § 24-11; street wall height may not exceed 60'-0" for six stories under ZR § 24-522; setbacks of 15 feet along 14th Avenue and 20 feet along 51st Street are required under ZR § 24-522; sky exposure plane may not exceed a ratio of 5.6 to 1 from the horizontal along 14th Avenue and 2.7 to 1 from the horizontal along 51st Street under ZR § 24-522; and a rear yard with a depth of 30 feet is required for the interior lot portion of the subject site under ZR § 24-36; and

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

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential

character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the School's proposed building is necessary to accommodate the School's programmatic needs and that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant submitted a comprehensive study of the School's programmatic needs, demonstrating that the School requires two separate expansion sites (namely, the site located at 1411 39th Street and the subject site) in order to accommodate its projected increase in enrollment from 2,031 students to 3,362 students, necessitating an increase of approximately 120,000 gross square footage, and that the School's programmatic needs require the following: both secular and religious educational spaces, including classrooms, specialized instructional spaces (including computer training, art, music, sewing and cooking), library resources, food service and space for public assemblies and administrative functions; the pairing of every two grades into a single academic unit under interrelated supervision; and conformance to planning standards and design guidelines for comparable educational facilities (including the provision of light and air to every classroom); and

WHEREAS, the applicant notes that the School currently faces programmatic deficiencies to be resolved by the School's proposed development at the subject site with respect to the crowding of classrooms; the lack of any science laboratory or facilities devoted to home economics, sewing or cooking; insufficient faculty spaces with no conference rooms; and small library spaces and lacking support spaces for tutoring and occupational and physical therapy; and

WHEREAS, the applicant analyzed and detailed the deleterious effects that the complying building form would have on the School's programmatic needs based on the school's educational mission and projected occupancy; and

WHEREAS, the applicant notes that an as-of-right development at the subject site would not meet the School's programmatic needs because only 34 classrooms would be allowed, where 53 are required, and the classrooms would be of insufficient size; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School's programmatic needs with

MINUTES

adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, the applicant studied the surrounding area, noting that schools are permitted as of right at the subject site; and

WHEREAS, the applicant notes that the subject block is mainly characterized by educational facilities with non-compliances with respect to street wall heights and sky exposure plane regulations; and

WHEREAS, in support of this contention, the applicant provided a streetscape study and photographic montage demonstrating that the height of the proposed development is consistent with the built form of the surrounding area; and

WHEREAS, the applicant further submits that there are a number of six- and seven-story buildings in the vicinity that are of similar height to the proposed building; and

WHEREAS, with respect to refuse, the applicant submits that the School's proposed building will provide areas for refrigerated trash storage space located within the interior of the building; and

WHEREAS, with respect to transportation, the applicant states that there would be no potential for significant adverse transportation impacts and, after evaluating safety conditions around the subject site, no pedestrian concerns were identified; and

WHEREAS, the applicant further notes that there are existing "no standing" zones between the hours of 7:00 a.m. and 7:00 p.m. already provided in front of the subject site on 14th Avenue and 50th Street and that the School's staff will employ two-way radio telecommunication devices to guide students to and from school buses; and

WHEREAS, the applicant also submitted an operational plan designed to ensure the safety of the School's arrivals and departures including the following measures: placement of three or four crossing guards at the subject site; providing at least four teachers at the entrances and exits of the proposed building to escort students to and from school buses; the existing "no standing" zones for buses along the front of the subject site; and the off-site parking of school buses; and

WHEREAS, with respect to bus parking, the applicant submitted a parking lease to allow bus parking at 1453 62nd Street (Block 5727, Tax Lot 46), Brooklyn as well as an off-street bus parking restrictive declaration to be recorded against the property to ensure that at all times the School will provide off-street bus parking for all of its school buses, when not in use; and

WHEREAS, in response to concerns expressed by the Board at hearing, the applicant represents that the School shall not permit any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts; and

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

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA032K, dated July 12, 2018; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated February 23, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts on architectural or archeological resources; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Environmental Protection ("DEP") states that the March 2017 Revised Remedial Action Plan ("RAP") for the subject site (5018 14th Avenue) is acceptable on condition that, at the completion of the project, a professional engineer certified Remedial Closure

MINUTES

Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and proof of installation of an engineering control system); and

WHEREAS, by letter dated August 9, 2017, DEP states that the February 2017 Remedial Closure Report for 1411 39th Street, which summarizes the remedial activities completed, which include the installation of a new concrete layer over the existing slab of the building's ground floor, ensuring that any compromise or cracks in the existing slab were either filled or covered with new concrete, the installation of an epoxy vapor barrier over the new concrete layer and the indoor air sampling using a photoionization detector, is acceptable and that DEP has no objection to the issuance of any permits or a certificate of occupancy for 1411 39th Street; and

WHEREAS, by letter dated November 14, 2018, DEP states that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; that, for the subject site (5018 14th Avenue), in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation are required; and that, for 1411 39th Street, in order to attain an indoor noise level of 45 dBA within the enlarged building, a composite window-wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation are required; and

WHEREAS, by letter dated January 11, 2019, DOT states that, based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of the subject site (5018 14th Avenue) (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of 1411 39th Street (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because 1411 39th Street is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and

approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at the subject site (5018 14th Avenue), teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19, 73-03 and 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R6 zoning district, the development of a school building that does not comply with zoning regulations for floor area, lot coverage, street wall height, setbacks, sky exposure plane and rear yards, contrary to ZR §§ 24-11, 24-522 and 24-36; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 26, 2019"-Twenty four (24) sheets; and *on further condition*:

MINUTES

THAT the bulk parameters of the school building at 5018 14th Avenue shall be as follows: a maximum of 70,444 square feet of floor area (7.03 FAR), maximum lot coverage of 95.3 percent (corner lot portion) and 100 percent (through lot portion), street wall height rising a maximum of 94'-1" for seven stories, no setbacks along 14th Avenue or 51st Street, sky exposure plane of 0 and no rear yard, as illustrated on the Board-approved drawings;

THAT the School shall not permit, at 5018 14th Avenue, any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts;

THAT a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

DECLARATION, made this _____ day of _____, 2019, by Bnos Zion of Bobov, hereafter referred to as the "Declarant" having an office at 5000 14th Avenue, Brooklyn, NY 11219.

WHEREAS, the Declarant operates a school at Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, hereinafter referred to as the "School Sites."

WHEREAS, the Declarant currently utilizes the parking lot located at Tax Block 5301, Lot 20, County of Kings, for the off-street storage of thirteen (13) school buses (the "Existing Bus Lot").

WHEREAS, the Declarant, commencing on or about September 1, 2019, will utilize the parking lot located at Tax Block 5727, Lot 46, County of Kings, for the off-street storage of its buses (the "Subsequent Bus Lot").

WHEREAS, the Declarant has requested various approvals from the New York City Board of Standards and Appeals to construct and/or alter buildings located on the School Sites, under BSA Cal. Nos. 2016-4274-BZ and 2016-4339-BZ.

WHEREAS, the New York City Board of Standards and Appeals requires the execution and recording of this Declaration in connection with the off-street storage of the Declarant's buses.

NOW, THEREFORE, in consideration of approvals by the New York City Board of Standards and Appeals, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, its successors and assigns that in the event that the Existing Bus Lot or the Subsequent Bus Lot are no longer available to Declarant, Declarant shall utilize an alternate lot at which the parking and storage of its thirteen (13) buses, or the total number of buses utilized by the Declarant at such time, is permitted in

accordance with the applicable provisions of the Zoning Resolution of the City of New York;

2. The Declarant shall at no time utilize on-street parking spaces for the storage of any of its buses;
3. This Declaration may not be modified, amended or terminated without the prior written consent of the New York City Board of Standards and Appeals;
4. The covenants set forth herein shall run with the land of Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, and be binding upon and inure to the benefit of the Declarant their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of approvals by the New York City Board of Standards and Appeals, which may result in the revocation of a certificate of occupancy; and
6. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

THAT in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation shall be provided, as indicated on the Board-approved drawings;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2016-4339-BZ"), shall be obtained within four (4) years, by February 26, 2023;

THAT based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of the subject site (5018 14th Avenue) (at the north side of 51st

MINUTES

Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of 1411 39th Street (the north side of 39th Street, approximately 5–10 feet east and west of the School’s entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because 1411 39th Street is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School’s main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at the subject site (5018 14th Avenue), teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School’s arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project’s completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases;

THAT at the completion of the project, a professional engineer certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and proof of installation of an engineering control system);

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 26, 2019.

2017-8-BZ

CEQR #17-BSA-062X

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – Variance (§72-21) to permit the construction of a new school (UG 3) (*Academic Leadership Charter School*) contrary to ZR §24-11 (Maximum Allowable Lot Coverage), ZR §24-522 (Heights and Setbacks) and ZR §2436 (Rear Yard). R6 zoning district.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 16, 2017, acting on DOB Application No. 210177672 reads in pertinent part:

1. ZR 24-36: The proposed building is contrary to rear yard requirements in a R-6 zoning [district] pursuant to ZR 24-36 . . . ;
2. ZR 24-11: The proposed building is contrary to lot coverage requirement in a R-6 zoning [district] pursuant to ZR 24-11 . . . ;
3. ZR 24-522: The proposed building is contrary to front wall and sky exposure plane requirements in a R-6 zoning [district] pursuant to ZR 24-522 . . . ; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an R6 zoning district in the Bronx, the construction of seven-story plus cellar Use Group (“UG”) 3 school that does not comply with the zoning regulations relating to lot coverage, rear yards, front wall height and sky exposure plane, contrary to ZR § 24-11, 24-36 and 24-522; and

WHEREAS, this application is filed on behalf of Academic Leadership Charter School, a non-profit entity (the “Applicant”) and New York City Department of Education authorized Charter School; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with continued hearings on October 11, 2018, January 8, 2019, and February 26, 2019,

MINUTES

and then to decision on February 26, 2019; and

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

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

WHEREAS, the subject site is comprised of four adjacent tax lots located on the south side of East 139th Street, between Alexander Avenue and Willis Avenue, in an R6 zoning district, in the Bronx; and

WHEREAS, the site has approximately 125 feet of frontage along East 139th Street, a depth of 100 feet, 12,500 square feet of lot area and is currently vacant; and

WHEREAS, the Applicant proposes to occupy the site with a seven-story plus cellar building with 59,901 square feet of floor area, a floor area ratio ("FAR") of 4.79, 100 percent lot coverage, no rear yard set back, a front wall rising to a height of 88 feet without setback and within the sky exposure plane; and

WHEREAS, for the subject intended occupancy at the subject site, a maximum of 65 percent lot coverage is permitted pursuant to ZR § 24-11; a rear yard with a depth of at least 30 feet is required pursuant to ZR § 24-36; and a maximum front wall height of 60 feet or six stories, whichever is less, above which a 20 foot front set back and compliance with a 2.7 to 1 (vertical distance to horizontal distance) slope are required, is permitted pursuant to ZR § 24-522; and

WHEREAS, accordingly, the Applicant seeks the subject relief to facilitate the development of a UG 3 school that will relocate their 250 middle school students (grades five through eight) students, currently co-located with another school located at 470 Jackson Avenue, and include elementary classroom space in addition to that located at the Applicant's existing elementary school, which is co-located within a public school building located at 677 East 141st Street in the Bronx; and

WHEREAS, the Applicant asserts that the existing middle school is inadequate for the programmatic needs of the school because the co-location provides the students with limited access to the cafeteria and gymnasium, does not include an outside play area, has a insufficiently sized library and lacks a science lab; and

WHEREAS, the Applicant proposes to relocate the existing middle school to the premises; open for the 2019-2020 school year with a total enrollment of 500 students (the 250 existing middle school students, 75 additional middle school students and 175 new elementary school students); and reach a target enrollment of 600 students (275 elementary school students and 325 middle school students) within three years (the 2022-2023 school year); and

WHEREAS, the proposed building includes 28 accessory off-street parking spaces and a refrigerated trash room in the cellar; a lobby, regulation-sized gymnasium with the capacity to double-function as an auditorium, administrative offices, storage and bathrooms on the first floor; a nurse's office, boys' and girls' locker rooms and

faculty spaces on the second floor; a cafeteria and 1,600 square foot library on the third floor with a roof terrace at the rear of the building on the roof of the second floor; two kindergarten classrooms, four general use classrooms, an art classroom and an administrative office on the fourth floor; six general use classrooms, a special education classroom and a music classroom on the fifth floor; six general use classrooms, a special education classroom and a science classroom on each of the sixth and seventh floors; and an outdoor play area on the roof (the "Proposed School"); and

WHEREAS, the Applicant asserts that a building in full compliance with the Zoning Resolution would provide fewer and smaller classrooms, one fewer science classroom, a smaller gymnasium and no locker rooms, a cafeteria with the capacity to be converted to a 365-seat auditorium (compared to the gymnasium in the Proposed School, which as a capacity of 648 persons when configured as an auditorium), a library containing less than half the floor area of the library in the Proposed School; and less administrative space; and

WHEREAS, in addition, at the Board's request, the applicant explored alternative lesser variances—(1) a building with no accessory off-street parking spaces in the cellar, a street wall rising to a height of 76 feet without setback that penetrates the sky exposure plane; 100 percent lot coverage to a height of 16 feet and 70 percent above 23 feet and a compliant rear yard; and (2) an eight-story building with accessory off-street parking spaces in the cellar that complies with street wall height, setback and sky exposure plane provisions, but would require a waiver of lot coverage and rear yard provisions to permit 100 percent lot coverage to a height of 26 feet and 70 percent lot coverage above 26 feet—but that the minimal reduction in the requested waivers are outweighed by the reduced program space provided in each of the alternative scenarios; and

WHEREAS, the Applicant represents that in addition to better accommodating its existing middle school, the Proposed School will enable the Applicant to gradually expand both its elementary and middle school divisions in response to the incredible demand for additional school seats in the area; and

WHEREAS, with regards to the need to provide accessory off-street parking spaces at the site, the Applicant asserts that such parking spaces are necessary because of the lack of sufficient on-street parking in the area and the school's employment of teachers that tend to drive to the premises and are required to arrive by 7 a.m.; and

WHEREAS, in support of this contention, the Applicant submitted letters from several of its teachers confirming the need for parking on the premises and difficulty in finding on-street parking in the area; a letter from Community Board 1, the Bronx, stating that, without the accessory off-street parking spaces proposed, the Applicant will be unable to attract and keep talented teachers; and a letter from the 40th Precinct of the New York Police Department in support of the off-street parking spaces included in the Proposed School; and

MINUTES

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

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

WHEREAS, based on the above, the Board finds that the Applicant's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, to wit, the surrounding area is characterized by multi-family residential, community facility and mixed-use buildings ranging from three-stories to seven-stories, that there are eight-story buildings and apartment towers within two blocks of the premises; that the Proposed School complies with applicable regulations pertaining to floor area and FAR; and that a Use Group 3 school is permitted as-of-right in the subject zoning district; and

WHEREAS, in response to the Board's request, the Applicant modified the proposed exterior building finishing materials from EIFS (exterior insulation and finishing system) to masonry; and

WHEREAS, accordingly, the Board finds that the Proposed School will not alter the character of the neighborhood in satisfaction of ZR § 72-21(c); and

WHEREAS, the Applicant states that the practical difficulties complained of are inherent to its unique programming needs and were not caused by the owner of the site or a predecessor in title; and

WHEREAS, the Board finds that the hardship herein was not created by the Applicant; and

WHEREAS, the Applicant submits that, consistent with ZR § 72-21(e), the subject proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow the Applicant to fulfill its programmatic needs; and

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

WHEREAS, by letter dated January 25, 2019, the Fire Department states that it grants the Applicant's application for a modification (variance) from the rooftop access and obstruction provisions of Section 504.4 of the New York City Fire Code and determined that the rooftop plan (Sheets P-02, P-06, and P-11 of the plans approved by the Board with this application) provides adequate Fire Department access to and upon the rooftop subject to the following conditions: (1) the determination only modifies compliance with respect to rooftop access and/or clear path requirements and does not modify the Applicant's obligation to comply with other applicable provisions of FC 504.4, including the marking and signage requirements of FC 504.4.7 and 504.4.8; (2) nothing contained in the determination be construed to authorize construction contrary to the New York City Building Code, Zoning Resolution or other applicable laws, rules or regulations; (3) approved modified rooftop access and/or clear path requirements as indicated on architectural drawing P-02, P-06, P-11, dated January 02, 2019, shall be constructed and maintained in accordance with the approved rooftop plan and maintained clear of obstruction and kept available for emergency responders; if any change is necessary, a new application shall be submitted to modify them; (4) the modification is site specific applicable only to the subject address and not transferable to any other address; and (5) the following stipulations listed below must be completed as detailed on P-02, P-06, P-11, dated January 02, 2019: (a) installation of the inward swinging gates to allow clear path through the proposed fences on both the upper and lower rooftops and (b) installation of signage indicating the location of the gates on both the upper and lower rooftops; and

WHEREAS, by letter dated January 28, 2019, the Fire Department states that the plans and application have been approved by the Office of Technical Management in the Bureau of Fire Prevention and has no objection to this application; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4(b)(9); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 17BSA062X, received February 16, 2018; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character or Construction; and

WHEREAS, by letter dated November 15, 2017, the New York City Department of Environmental Protection ("DEP") states that they have reviewed the December 2016

MINUTES

Environmental Assessment Statement, January 2016 Phase I Environmental Site Assessment (Phase I) and the February 2016 Phase II Environmental Site Assessment-Vapor Intrusion Evaluation (Phase II) provided by the Applicant's consultants and recommended that the Board inform the Applicant that based on the historical on-site and/or surrounding area land uses, as well as the results of the February 2016 Phase II-Vapor Intrusion Evaluation, a Supplemental Phase II Environmental Site Assessment is necessary to adequately identify/characterize the surface and subsurface soils of the subject parcels; a Phase II Investigative Protocol/Work Plan—including blueprints and/or site plans displaying the current surface grade and sub-grade elevations and a site map depicting the proposed soil boring locations—summarizing the proposed drilling, soil and groundwater sampling activities be submitted to DEP for review and approval; that soil and groundwater sample be collected and analyzed by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory for the presence of VOCs by EPA Method 8260, semi-volatile organic compounds by EPA Method 8270, pesticides by EPA Method 80081, polychlorinated biphenyls by EPA Method 8082, Target Analyte List metals (filtered and unfiltered for groundwater samples); an Investigative Health and Safety Plan (HASP) be submitted to DEP for review and approval; and that the Phase II Work Plan and HASP be submitted to DEP for review and approval prior to the start of any fieldwork; and

WHEREAS, by letter dated February 16, 2018, DEP states that they have reviewed the January 2018 Supplemental Phase II Environmental Site Assessment Work Plan (Phase II Work Plan) and the January 2018 Health and Safety Plan (HASP) prepared by the Applicant's consultants and recommended, in reference to the Phase II Work Plan, that the Board instruct the Applicant to individually label the proposed soil and groundwater sampling locations on the Proposed Sample Locations Plan (e.g. SB-1, GW-1, etc.) and revise the soil sampling depths—at a minimum, one surface soil sample and one subsurface soil sample should be collected from each soil boring, the surface soil sample should be collected from 0-2 feet bgs and the subsurface soil sample should be collected between 2 feet bgs and the maximum proposed excavation depth (based on visual/olfactory evidence of impacts and/or elevated soil screening readings obtained using accepted field instruments; if no evidence or elevated readings are noted during borehole advancement, the subsurface soil sample should be collected from the two foot interval between the proposed maximum excavation depth(s) and/or the groundwater interface (whichever is encountered first); and, with regards to the HASP, DEP recommended that the Applicant include information fact sheets and/or Safety Data Sheets for potential contaminants of concern; and

WHEREAS, DEP found the January 2018 Phase II Work Plan and HASP for the proposed investigation acceptable so long as the requested information is incorporated into those documents and on condition that,

upon completion of the investigation activities at the site, the applicant submit a detailed Phase II Report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil and groundwater analytical results (i.e., New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 and NYSDEC Water Quality Regulations), updated site plans depicting sample locations, boring logs and remedial recommendations, if warranted—to DEP for review and approval; and

WHEREAS, the Applicant subsequently revised and resubmitted the Phase II Work Plan and HASP in accordance with DEP's February 16, 2018, letter on March 1, 2019; and

WHEREAS, by letter dated September 18, 2018, DEP states that they have reviewed the August 2018 Remedial Action Plan (RAP) and the August 2018 Construction Health and Safety Plan (CHASP) provided by the Applicant's consultants and, based on their review, recommended that proper handling, transportation and disposal of excavated materials from the site should be done in accordance with applicable NYSDEC regulations (not NYCDEP); if de-watering into New York City storm/sewer drains will occur during the proposed construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any de-watering; the RAP be finalized and the certification page completed, the CHASP reflect the measures to be implemented during the construction phase of the proposed project and not those implemented during a proposed site investigation; all text referring to site investigation activities be revised accordingly; the date on the header of the CHASP be consistent with the date on the cover page; information fact sheets and/or Safety Data Sheets for potential contaminants of concern be included in the CHASP; the CHASP be finalized; and that a revised RAP And CHASP be submitted to DEP for review and approval prior to the start of any construction activities; and

WHEREAS, by letter dated October 19, 2018, DEP states that it has reviewed the Revised August 2018 RAP and Revised August 2018 CHASP and finds those documents acceptable on condition that, at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report indicating that all remedial requirements have been properly implemented (i.e., proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC Regulations; and proof of installation of engineering control systems, etc.) be submitted to DEP for review and approval for the proposed project; and

WHEREAS, in a letter dated January 31, 2019, DEP states that, based on the results of Air Quality analysis performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in any potential for significant adverse impacts in regards to air quality and, based on the

MINUTES

results of the Noise analysis performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in any potential for significant adverse impacts in regards to noise with the following commitments from the proposed project: (1) a composite window/wall noise attenuation of 33 dBA is proposed for the proposed project's southern façade facing the third floor outdoor play area (elevations of 28 feet and above); (2) the proposed third floor outdoor play area be installed with an acoustic fence providing a minimum noise attenuation of 10 dBA; and (3) an alternate means of ventilation be required and incorporated into the building design and construction; and

WHEREAS, by letter dated May 24, 2017, the School Safety Division of the New York City Department of Transportation ("DOT") states that it has no concerns regarding the proposed school and requests that the Applicant notify DOT upon construction in order for the division to determine if traffic safety improvements or parking regulations changes are necessary; and

WHEREAS, the New York City Landmarks Preservation Commissioner reviewed the proposal and concludes that the subject site is of neither architectural nor archaeological significance; and

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

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby issue a Type I Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, in an R6 zoning district in the Bronx, the construction of seven-story plus cellar UG 3 school that does not comply with the zoning regulations relating to lot coverage, rear yards, front wall height and sky exposure plane, contrary to ZR § 24-11, 24-36 and 24-522; *on condition* that all work shall substantially conform to drawings as they apply to the objections noted above and filed with this application marked "Received February 26, 2019"—Twenty-three (23) sheets and "Approved for FDNY rooftop access Fire Code Section 504.4 only" – Three (3) sheets (sheets P-02, P-06, P-11); and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 100 percent lot coverage to a height of 28 feet; a rear yard with a minimum depth of 0 feet to a height of 28 feet; a rear yard with a minimum depth of 30 feet above 28 feet; and a maximum front wall height of 88 feet without setback that penetrates the sky exposure plane, as indicated on the BSA-approved plans; and

THAT the exterior finishing materials shall consist of

masonry on side walls, masonry rain screen, metal panels and glazing on front and rear walls, as indicated on the BSA-approved plans, and the use of exterior insulation finishing system ("EIFS") shall not be permitted;

THAT composite window/wall noise attenuation of 33 dBA shall be provided on the southern façade of the building facing the third-floor outdoor play area (elevations of 28 feet and above);

THAT an acoustic fence, at least ten (10) feet in height be installed on the perimeter of the third-floor outdoor play area providing a minimum of 10 dBA noise attenuation;

THAT an alternate means of ventilation shall be incorporated into the building design and construction;

THAT approved modified rooftop access and/or clear path requirements as indicated on architectural drawing P-02, P-06, P-11, dated January 02, 2019, shall be constructed and maintained in accordance with the approved rooftop plan and maintained clear of obstruction and kept available for emergency responders;

THAT the following stipulations must be completed as detailed on P-02, P-06, P-11, dated January 02, 2019: (a) installation of the inward swinging gates to allow clear path through the proposed fences on both the upper and lower rooftops and (b) installation of signage indicating the location of the gates on both the upper and lower rooftops;

THAT no amplified lighting or sound shall be permitted on the roof of the building;

THAT upon completion of the investigation activities at the site, the applicant shall submit a detailed Phase II Report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil and groundwater analytical results (i.e., New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 and NYSDEC Water Quality Regulations), updated site plans depicting sample locations, boring logs and remedial recommendations, if warranted—to the New York City Department of Environmental Planning ("DEP") for review and approval;

THAT at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report indicating that all remedial requirements have been properly implemented (i.e., proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC Regulations; and proof of installation of engineering control systems, etc.) shall be submitted to DEP for review and approval for the proposed project;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy, indicating this approval and calendar number ("BSA Cal. No. 2017-8-BZ") shall be obtained within four (4) years, by February 26, 2023;

THAT this approval is limited to the relief granted by

MINUTES

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

2018-10-BZ

CEQR #18-BSA-089K

APPLICANT – Sheldon Lobel, P.C., for Gershon Klein, owner.

SUBJECT – Application January 26, 2018 – Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district.

PREMISES AFFECTED – 1238 East 26th Street, Block 7643, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2018, acting on Department of Buildings (“DOB”) Application No. 321422199, reads in pertinent part:

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Floor Area Ratio exceeds the maximum permitted;

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Floor Area exceeds the maximum permitted;

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Open Space Ratio is less than the minimum required;

[. . .]1

Proposed plans are contrary to Zoning Resolution 23-461 and 23-47 in that the proposed side and rear

yards are less than minimums required; and

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

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with continued hearings on December 11, 2018, January 15, 2019, and February 26, 2019, and then to decision on that same date; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on condition that the floor area ratio (“FAR”) be no greater than 1.05; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage, 100 feet of depth, 3,000 square feet of lot area, and is occupied by a two (2) story plus cellar and attic single-family dwelling containing 2,480 square feet of floor area (0.83 FAR), an open space ratio of 0.8 (1,980 square feet of open space), a front yard with a depth of 15’-11”, a rear yard with a depth of 22’-11”, and two (2) side yards with widths of 9’-11” and 3’-11”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*² of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit

1 The applicant received an objection under Section 23-631 of the Zoning Resolution due to the penetration of the sky exposure plane by a front dormer. Over the course of hearings, the applicant revised the proposed building to comply with ZR § 23-631 and, thus, such waiver is no longer sought nor required.

2 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the

building by both vertically and horizontally extending the dwelling into the rear yard and southern side yard, resulting in a two- (2) story plus attic and cellar dwelling with 2,982 square feet of floor area (0.99 FAR), an open space ratio of 0.58 (1,744 square feet of open space), a front yard with a depth of 15'-1", a rear yard with a depth of 20 feet at the first story with an additional five (5) foot setback at the second story, and two (2) side yards with widths of 6'-1" and 3'-11"; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor to 1,245 square feet, the second floor to 1,027 square feet, and the attic to 710 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.5 is required, two (2) side yards each a minimum of five (5) feet in width and a minimum combined width of 13 feet and a rear yard with a minimum depth of 30 feet are required pursuant to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying northern side yard and rear yard, and the Board notes that, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying northern side yard and rear yard predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 200 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 40 qualifying residences, 26 residences (65 percent) have an FAR of greater than 0.5, ranging from 0.52 to 1.49; and

WHEREAS, with regards to open space, the applicant demonstrated that, within the Study Area, 38 residences (95 percent) have an open space ratio less than 1.50, ranging from 1.39 to 0.49, and 6 residences (15 percent) have an open space ratio of 0.58 or less; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 42 other single- or two- (2) family dwellings, 10 lots (24 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 22 feet to 28 feet, including the dwellings located immediately adjacent to the north of the subject site and the dwelling rear adjacent and to the southwest of the subject site, which have rear yard depths of 24 feet and 26 feet respectively; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

MINUTES

community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-089K, dated January 30, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “Received February 15, 2019”-Twenty-One (21) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.99 (2,982 square feet of floor area), a minimum open space ratio of 0.58 (1,744 square feet of open space), two (2) side yards with minimum widths of 6’-1” and 3’-11” at the northern side yard, and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet above as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-10-BZ”) shall be obtained within four (4) years, by February 26, 2023;

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

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

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

Adopted by the Board of Standards and Appeals,
February 26, 2019.

2018-58-BZ

CEQR #18-BSA-128M

APPLICANT – Sahn Ward Coschignano, PLLC, for MOCAL Enterprises, Inc., owner; AKT Broadway LLC, lessee.

SUBJECT – Application April 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (AKT In-Motion) on the second floor of an existing mixed-use building contrary to ZR §42-10. M1-6 (Madison Square North Historic District).

PREMISES AFFECTED – 1182 Broadway, Block 830, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 12, 2018, acting on DOB Application No. 123435005, reads in pertinent part:

Proposed Physical Culture Establishment in M1-6 zoning district is not permitted pursuant to ZR 42-10, and is referred to the Board of Standards and Appeals for a Special Permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-6 zoning district and in the Madison Square North Historic District, a physical culture establishment (“PCE”) on the second floor of an existing 17-story plus cellar mixed-use residential and commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2019, and then to decision on that same date; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Broadway, between West 28th Street and West 29th Street, in an M1-6 zoning district and in the Madison Square North Historic District, in Manhattan; and

WHEREAS, the site has approximately 53 feet of frontage, 113 feet of depth along its northern lot line, 95 feet of depth along its southern lot line, 5,124 square feet of lot area and is occupied by an existing 17-story plus cellar

MINUTES

mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are

made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 3,320 square feet of floor area on the second floor with two (2) training studios for group exercise classes, one (1) studio for personal training, a retail area, changing rooms with showers, a reception area, an office and meeting space, and a staff room; and

WHEREAS, the PCE has operated since November 2015, as “AKT In-Motion,” with the following hours of operation: 6:00 a.m. to 8:45 p.m., Monday through Friday; and, 9:00 a.m. to 2:30 p.m., Saturday and Sunday; and

WHEREAS, the applicant states that the PCE utilizes a variety of sound and vibration attenuation techniques to maintain sound and vibration solely within the exercise studios; specifically, the PCE has speakers of varying sizes that are placed between eight (8) to ten (10) feet from the floor; a limiter is installed on the sound system to control the bass and volume of the music; the PCE provided soundproofing in the ceiling with the installation of wave hangers to support the ceiling framing channel; two (2) layers of 5/8” drywall with staggered seams were added and any metal piping through the ceiling was separated from the drywall ceiling by a 1/4” space and filled with flexible sealant; interior studio partitions are comprised of two (2) layers of 5/8” drywall with staggered seams on each side with insulation in between; exterior studio walls consist of two (2) layers of 5/8” drywall with staggered seams separated from the concrete wall by a one- (1) inch gap; and, the floor consists of a multi-layer spring panel system with vinyl over two- (2) inch thick rubber square pads; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located entirely in an existing building, and it is consistent with the mix of nearby uses including other PCEs, offices, retail establishments, hotels and residences; and

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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement through dance-based strength, cardiovascular, circuit and flexibility training; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE is served by an entrance, corridor and elevator designated only for the commercial uses within the subject building and PCE is surrounded above and below by commercial uses; and

WHEREAS, the applicant states that the PCE is protected with a wet sprinkler system and an approved fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station; and

WHEREAS, by letter dated January 31, 2019, the Fire Department stated no objection to the application and confirmed that the fire alarm and fire suppression (combination standpipe and sprinkler) systems were inspected and tested satisfactory to the Department standards; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant submits that the New York City Landmarks Preservation Commission, pursuant to Certificate of No Effect (CNE 18-4020) dated March 31, 2016, permitted exterior alterations on the east façade, including the modification of two (2) upper sashes of one-over-one metal double-hung windows; the installation of two (2) through-window louvers with a copper finish; and related interior alterations including changes to non-bearing partition walls, finishes, mechanical, electrical and plumbing systems; and

WHEREAS, at hearing, the Board requested that the acoustical details be keyed-in to the floor plan to show specific measures used in distinct areas of the PCE; and

WHEREAS, in response, the applicant submitted an amended set of drawings demonstrating the acoustical measures as keyed into the floor plans; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist

No. 18-BSA-128M, dated April 26, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a M1-6 zoning district and in the Madison Square North Historic District, the operation of a physical culture establishment on the second floor of an existing 17-story plus cellar mixed-use residential and commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 13, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 1, 2025;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-58-BZ”), shall be obtained within one (1) year, by February 26, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

MINUTES

2018-99-BZ

CEQR #18-BSA-143M

APPLICANT – Sheldon Lobel, P.C., for Shawn Hope, owner.

SUBJECT – Application May 25, 2018 – Variance (§72-21) to permit the construction of a five-story and basement, two-family building contrary to ZR §23-32 (Minimum Lot Area or Lot Width for Residences). R7A zoning district.

PREMISES AFFECTED – 275 Pleasant Avenue, Block 1708, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated April 27, 2018, acting on Department of Buildings (“DOB”) Application No. 122132101 reads in pertinent part:

ZR 23-32; ZR 23-33: New Building Application filed for undersized lot is contrary to ZR 23-32 and does not comply with ownership requirement of ZR 23-33, therefore this application is referred to the BSA; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R7A zoning district, the construction of a five-story plus basement two-family residence that does not comply with the minimum requirement for lot area and lot width, contrary to ZR §§ 23-32 and 23-33; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2019, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the west side of Pleasant Avenue, between East 115th Street and East 114th Street, in an R7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 13 feet of frontage along Pleasant Avenue, a depth of 74 feet, 941 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a five-story plus basement Use Group 2 two-family residential building containing 3,512 square feet of floor area and a floor area ratio (“FAR”) of 3.73; and

WHEREAS, in the subject zoning district, no residence is permitted on a zoning lot with a total lot area of less than 1,700 square feet and total lot width of less than 18 feet pursuant to ZR § 23-32; and

WHEREAS, pursuant to ZR § 23-33, a single-family detached reside or one single- or two-family residence may

be developed on a lot with less than the prescribed minimum lot area or lot width that does not comply with the provisions of ZR § 23-32 if it was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit and, if developed as a two-family residence, it meets the applicable density requirement of the zoning district in which such zoning lot is located; and

WHEREAS, two-family residences are permitted as-of-right in an R7A zoning district pursuant to ZR § 22-12 and a two-family dwelling complies with the applicable density requirement, set forth in ZR § 23-22, which defines the maximum number of dwelling units at the site as the maximum residential floor area permitted on the zoning lot divided by 680; and

WHEREAS, at the subject site, the maximum residential floor area permitted at the site is 3,764 square feet pursuant to ZR §§ 23-15 and 23-153, which permit a maximum FAR of 4.0 for buildings containing residences located in an R7A zoning district; and

WHEREAS, accordingly, the maximum number of dwelling units permitted at the site is five, thus, the applicant’s proposal of two dwelling units at the subject site meets the density requirement applicable in an R7A zoning district; and

WHEREAS, development of the site with a two-family residence is not permitted as-of-right despite its non-compliance with the minimum lot width and lot area requirements and compliance with applicable density requirements because it was not owned separately and individually from all other adjoining tracts of land on December 15, 1961; and

WHEREAS, the applicant submits that according to recorded deeds, the subject site was owned by the same party as adjacent tax lot 125, located immediately to the north of the subject site, on December 15, 1961; and

WHEREAS, in fact, the subject lot has been owned in common with tax lot 125 from at least November 17, 1955, until December 2, 1974, when the sites were acquired by the City of New York in a tax lien foreclosure action; and

WHEREAS, the sites were both subsequently deeded to the same corporation on July 15, 1976, but on September 24, 1980, they ceased to be owned in common when the City of New York re-acquired tax lot 125 alone in another tax lien foreclosure action; and

WHEREAS, the applicant represents that since that September 23, 1980, the subject lot has been owned separately and individually from all surrounding tax lots and, due to the inability to develop the subject site as-of-right pursuant to ZR § 23-33 as a result of the history of common ownership, seeks the subject relief; and

WHEREAS, the applicant states that the site was previously developed with a residential building and provided historic Sanborn fire insurance maps of the immediate area evidencing that the subject site was occupied by a residential building from at least 1896 to 1939 and has been vacant since at least 1951; and

MINUTES

WHEREAS, the applicant submits that, aside from the minimum lot width and lot area requirements, the proposed development is otherwise compliant with applicable zoning regulations; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), the narrowness, small size and vacancy of the subject site are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of all lots located within 1,000 feet of the premises (the “Study Area”) illustrating that of the 251 other lots in the Study Area, ten lots (approximately 4 percent) have lot widths of less than 15 feet and one lot (0.4 percent) is narrower than the subject site, with a width of 12’-6.5””; 11 lots (4 percent) have less than 1,200 square feet of lot area and three lots (1 percent) have less lot area than the subject site; three lots (1 percent) have both lot widths of less than 15 feet and lot area of less than 1,200 square feet, and only one lot in the Study Area (0.4 percent) has a lot width of less than 15 feet, lot area of less than 1,200 square feet and is also vacant; and

WHEREAS, the applicant identifies that site as tax lot 125, located immediately to the north of the subject site, which the applicant represents as having been conveyed, along with tax lot 26, for development as part of a Urban Development Action Area Project (“UDAAP”) as evidenced by the Agreement entered into by the City of New York and 277-279 Pleasant Avenue Corporation and recorded with the Office of City Register, New York County, against tax lots 125 and 26 located on the subject tax block 1708 at Reel 811, Page 1416, a copy of which was provided to the Board; and

WHEREAS, in addition, the Board notes that the subject tax lot has existed at its current dimensions since at least 1896, when the Sanborn fire insurance map of the immediate area indicates that it was occupied by an attached building that, since at least 1911, contained dwelling units; and

WHEREAS, in light of the foregoing, the Board finds that the narrowness, small size and vacancy of the subject lot create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that, because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable two-family dwelling, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood because the proposed use is permitted as-of-right in the subject zoning district; that, with the exception of minimum lot width and lot area, the proposed building otherwise complies with the bulk regulations applicable in an R7A zoning district and consist of 3,512 sq. ft. square feet of floor area, 3.73 FAR, a street wall height of 62’-6”

and building height of 72’-7””; and that other buildings on the same block rise to similar heights and contain more floor area than the proposed development, including the building located at the corner of East 114th Street and Pleasant Avenue, approximately 25 feet south of the subject lot, which has an FAR of approximately 4.09 and rises to an estimated height of 80 feet; and

WHEREAS, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits that pursuant to ZR § 72-21(d) the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the president of the corporate owner of tax lot 125 provided testimony to the Board in opposition to this application, stating that the proposed development does not meet the finding of ZR § 72-21(d); and

WHEREAS, at the Board’s request, the applicant provided a memorandum of law addressing whether the cessation of the common ownership of tax lots 25 and 125 is a self-created hardship that forecloses the granting of a variance and concluding that, because common ownership ceased as a result of the actions of a third party—in this case, the intervening acquisition of tax lot 125 by the City of New York in foreclosure—the hardship complained of was not created by the owner or a predecessor in title and, further, that pursuant to the language of ZR § 72-21(d) itself, “where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship”; and

WHEREAS, the Board is persuaded that the hardship complained of herein were not self-created in satisfaction of ZR § 72-21(d); and

WHEREAS, the applicant states, and the Board finds, that the subject proposal is the minimum relief required in satisfaction of ZR § 72-21(e); and

WHEREAS, the development is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA143M, dated June 1, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R7A zoning district, development of a five-story plus basement two-family dwelling that does not comply with the minimum requirement for lot width and lot area, contrary to ZR §§ 23-32 and 23-33, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 26, 2019--Twelve

MINUTES

(12) sheets”; and *on further condition*:

THAT the Board has not granted any waivers with regards to rear yard requirements at the site;

THAT Department of Buildings shall review compliance of proposed greenhouse with applicable zoning regulations relating to permitted obstructions in yards;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal. No. 2018-99-BZ”) shall be obtained within four (4) years, by February 26, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2019.

2018-107-BZ

APPLICANT – Eric Palatnik, P.C., for Corporate Commons Three, LLC, owner.

SUBJECT – Application July 5, 2018 – Variance (§72-21) to permit a school campus (UG 3) (Integration Charter Schools) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1441 South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 3, 2018, acting on New Building Application No. 520311154, reads in pertinent part:

“ZR 42-10 Proposed school (use group 3) . . . is contrary to Section 42-10 of the NYC Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a mixed-use community-facility and commercial building for use as a school (Use Group 3) on the first, third, fourth and fifth floors that does not comply with zoning regulations for use, contrary to ZR § 42-10; and

WHEREAS, this application has been brought on behalf of Integration Charter Schools (the “School”), a public school; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2019, and then to decision on February 26, 2019; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the south side of South Avenue, in an M1-1 zoning district, on Staten Island; and

WHEREAS, the subject site has approximately 557 feet of frontage along South Avenue, 746 feet of depth, 373,838 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop an eight-story mixed-use community-facility and commercial building with a total of 328,319 square feet of floor area (0.87 FAR), of which 127,908 square feet (0.34 FAR) is proposed for school use on the first, third, fourth and fifth floors; and

WHEREAS, the applicant states that, at the subject site, school use is not permitted under ZR § 42-10; and

WHEREAS, consistent with ZR § 72-21, the applicant submits that the proposed use of the development is necessary to accommodate the School’s programmatic needs; and

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

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, in order to substantiate the practical difficulties or unnecessary hardship facing the School, the applicant submitted a study of the School’s programmatic needs, demonstrating that the School’s two existing buildings adjacent to the subject site are no longer able to serve the School’s existing enrollment and that the School’s proposed use of the development would include adequate classroom space and properly sized auditoriums to further the School’s educational mission; and

WHEREAS, in response to questions from the Board, the applicant revised the School’s programmatic needs study to elaborate on the hours, age ranges and programmatic mission of each of the programs to be located within the proposed development; to provide additional information on

MINUTES

the School's operations; to clarify the utilization of spaces in the proposed development; to address the proposed classroom sizes and how they address the School's programmatic needs; and to clarify the hourly utilization of the proposed spaces; and

WHEREAS, with respect to deficiencies that would be resolved by the proposed development, the applicant notes, among other things, that the School currently operates from temporary trailers; that consolidation of the School's programs into designated spaces on a single campus is necessary to achieve the School's educational mission; and that the School's elementary program currently has no dedicated facilities; and

WHEREAS, the applicant states that the School's proposed development would allow an elementary program with a projected enrollment of 408 students to locate on the third floor with access to the fourth floor, a non-traditional educational program with a projected enrollment of 216 students to locate on the fourth floor and an early college program with a projected enrollment of 403 students to locate on the fifth floor; and

WHEREAS, applicant states that the School's elementary program requires 24 classrooms with administrative and faculty rooms, calming rooms, meeting rooms and work rooms; that the School's non-traditional educational program requires one classroom and utilization of the cafeteria, movement studios, weight rooms and dance studios along with an instructional kitchen; and that the School's early college program requires 21 classrooms with an incubator space for business ventures, a science laboratory and a college advisement office to be located adjacent to classroom space; and

WHEREAS, with respect to classroom sizes, the applicant furnished evidence that the proposed classrooms are similarly spaced to those constructed by the City's School Construction Authority; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variances requested are necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, finding a vibrant mix of community-facility and commercial uses located in the vicinity of the subject site along with open areas; and

WHEREAS, the applicant notes that the proposed development would provide varied open spaces, including a landscaped plaza, a pedestrian promenade, moveable seating and a fountain, enhanced by appropriate lighting, and that there are residences located approximately 0.6 miles from the subject site; and

WHEREAS, with respect to arrivals and departures, the applicant states that the School's elementary program would have students arrive between 7:20 a.m. and 7:55 a.m. with departures between 2:30 p.m. and 3:00 p.m. with arrivals by car, by one of seven yellow buses or by public buses; that the School's non-traditional educational program would have students arrive between 3:25 p.m. and 3:55 p.m. and depart between 7:35 p.m. and 8:00 p.m. by car, by one of seven yellow buses or by public buses; that students of the School's early college program will arrive and depart for classes between the hours of 8:00 a.m. and 2:30 p.m.; and

WHEREAS, the applicant notes that the School proposes a dedicated entryway and entry plaza to allow for safe arrivals and departures; that the School's staff is tasked with monitoring duties; and that a dedicated bus lane is proposed for the edge of the School's entry plaza; and

WHEREAS, the applicant provided a maneuverability diagram illustrating the arrival and departure of students for the School's different programs; and

WHEREAS, the applicant further submitted an operational plan—including checkpoints for monitoring traffic and studios, radio communication devices, staggering of bus arrivals and departures and an explanation of public bus arrivals and departures—and study of the orderly arrival and departure of students from two other buildings within the School's existing campus that demonstrates the presence of the School's monitoring and security staff and the use of radio communication devices to coordinate pedestrian and vehicular movements in a safe and orderly fashion; and

WHEREAS, in response to questions from the Board at hearing, the applicant clarified that the School proposes to dedicate a single elevator solely for student access; to install a gate at the entrance to the loading berth to provide enhanced security for students arriving and departing the School; to revise the sound attenuation measures in conformance with the Board's environmental review; and to install a security controlled double door at the fourth floor to ensure total separation between the School's elementary program and the School's non-traditional program; and

WHEREAS, by letter dated January 5, 2019, the Fire Department states that it has no objection to this application; and

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

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

MINUTES

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is part of the Teleport Site A project that is classified as an Unlisted action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Mayor's Office of Environmental Coordination, as lead agency, has conducted an environmental review of the proposed action and documented relevant information about the project in Technical Memorandum 002 ("Tech Memo 002") dated September 24, 2018, to determine whether proposed changes to the previously approved Teleport Site A project would result in any significant adverse environmental impacts that were not previously addressed in the December 2016 Teleport Site A Environmental Assessment Statement ("Teleport Site A EAS"; CEQR No. 16DME013R, ULURP No. 170156PPR and ULURP No. 170157ZCR) or in Technical Memorandum 001 ("Tech Memo 001"), dated June 29, 2017; and

WHEREAS, analyses prepared for stationary noise in Tech Memo 002 show that in order to satisfy CEQR interior noise level requirements and ensure acceptable interior noise levels, residential/community facility uses along South Avenue must provide 31 dBA of composite attenuation for that street frontage; attenuation values for commercial and office uses on all facades would be 5 dBA less in order to maintain a maximum interior noise levels of 45 dBA or lower for residential/community facility uses and 50 dBA or lower for commercial/office uses; and as required by the New York City Building Code, an alternate means of ventilation must also be provided in order to maintain a closed-window condition; and

WHEREAS, analyses prepared for transportation in Tech Memo 002 identify minor modifications to previously proposed off-site traffic improvement measures associated with the Teleport Site A EAS and these required improvements are described in Table 17 of Tech Memo 002; and

WHEREAS, Tech Memo 002 concludes that the proposed project is not expected to result in any significant adverse environmental impacts that had not been previously identified in the Teleport Site A EAS or subsequent Tech Memo 001, and the conclusions in the December 9, 2016 Negative Declaration remain valid; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *adopt* the findings of Tech Memo 002 dated September 24, 2018 prepared by the Mayor's Office of Environmental Coordination in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-1 zoning district, the development of a mixed-use community-facility and commercial building for use as a school (Use Group 3) on the first, third, fourth and fifth floors that does not comply with zoning regulations for use, contrary to ZR § 42-10; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received February 26, 2019"-Twenty-seven (27) sheets; and *on further condition*:

THAT the applicant shall work with the Department of Transportation to ensure school safety and make whatever changes are recommended by the Department of Transportation to improve and ensure the safety of school children;

THAT at the fourth floor, the corridor that gives onto the School's elementary classrooms designated 415; 416; 417; and 421—illustrated on sheet BSA-204 of the Board-approved drawings—shall be separated with double doors that swing in the direction of egress that are locked and equipped with panic hardware to meet applicable fire-egress requirements so as to ensure and provide security and isolate that corridor of the School building;

THAT the gate on the loading berth shall kept closed during all arrivals and departures of children;

THAT elevator S2 shall be dedicated to school use without access by other tenants in the building;

THAT security controls as indicated on the Board-approved drawings shall be implemented;

THAT sound attenuation shall be installed in the school building, as indicated on the Board-approved plans;

THAT traffic improvement measures shall be implemented, as described in Tech Memo 002;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2018-107-BZ"), shall be obtained within four (4) years, by February 26, 2023;

THAT this approval is limited to the relief granted by

MINUTES

the Board in response to objections cited and filed by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 26, 2019.

2016-4153-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Zichron Yehuda, owner.

SUBJECT – Application March 30, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Project Witness*) contrary to floor area ratio and lot coverage (§24-34), front yard (§24-34) and side yard (§24-35(a)). R5 zoning district.

PREMISES AFFECTED – 4701 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 26, 2019 1:00 P.M.

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

ZONING CALENDAR

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over June 11, 2019, at 10 A.M., for continued hearing.

2017-301-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Jeffrey Rosenblum, owner; Trapeze School New York LLC, lessee.

SUBJECT – Application November 16, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Trapeze School*) contrary to ZR §32-10. M1-3 zoning district.

PREMISES AFFECTED – 467 Marcy Avenue, Block 1720, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

2018-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to May 21,

MINUTES

2019, at 10 A.M., for continued hearing.

2018-117-BZ

APPLICANT – Eric Palatnik, P.C., for Aron Ungar, owner.
SUBJECT – Application July 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two family, two-story home contrary to ZR §23-142 (floor area ratio) and ZR §23-461 (side yard requirements). R5 zoning district.

PREMISES AFFECTED – 2060 63rd Street, Block 5542, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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March 15, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-----------------------------------|-----|
| DOCKET | 198 |
| CALENDAR of March 26, 2019 | |
| Morning | 199 |
| Afternoon | 200 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, March 5, 2019**

Morning Calendar201

Affecting Calendar Numbers:

| | |
|--------------------------|--|
| 624-68-BZ | 188-07/15 Northern Boulevard, Queens |
| 1016-86-BZ | 2162-2166 Broadway, Manhattan |
| 61-08-BZ | 439 86 th Street, Brooklyn |
| 89-10-BZ | 53 Mercer Street, Manhattan |
| 30-58-BZ | 184-17 Horace Harding Expressway, Queens |
| 218-58-BZ | 77-40 Hewlett Street, Queens |
| 771-76-BZ | 375 Pearl Street, Manhattan |
| 130-88-BZ | 3602 Snyder Avenue, Brooklyn |
| 132-92-BZ | 3948 Amboy Road, Staten Island |
| 149-97-BZ | 150-19 11 th Avenue, Queens |
| 271-09-BZ | 132-40 Metropolitan Avenue, Queens |
| 2017-316-A | 95 Androvette Street, Staten Island |
| 2018-23-A & 2018-24-A | 29 and 31 Herbert Street, Staten Island |
| 2017-222-BZ | 200-01 116 th Avenue, Queens |
| 2017-268-BZ | 33-73 154 th Street, Queens |
| 2018-120-BZ | 550 West 41 st Street, Manhattan |
| 2016-4171-BZ | 823 Kent Avenue, Brooklyn |
| 2016-4239-BZ | 180 Mansion Avenue, Staten Island |
| 2016-4265-BZ | 25 Bleecker Street, Manhattan |
| 2017-217-BZ | 4855 Hylan Boulevard, Staten Island |
| 2017-270-BZ | 1434 Utica Avenue, Brooklyn |
| 2018-3-BZ | 154-160 West 124 th Street, Manhattan |
| 2018-98-BZ | 160-10 Cross Bay Boulevard, Queens |

Afternoon Calendar218

Affecting Calendar Numbers:

| | |
|-------------|-------------------------------|
| 2019-33-BZ | 423 Beach 43 Street, Queens |
| 2017-233-BZ | 446-448 Park Avenue, Brooklyn |

CONTENTS

MINUTES of Special Hearing,
Thursday, March 7, 2019

Morning Calendar221

Affecting Calendar Numbers:

2018-166-A 40-31 82nd Street, Queens

DOCKETS

New Case Filed Up to March 7, 2019

2019-40-BZ

175-179 East 73rd Street, Block 1408, Lot(s) 30 and 31, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the enlargement of a House of Worship (UG 4) (Persian Jewish Center) contrary to ZR §24-36 (rear yard); ZR §24-11 (lot coverage); ZR §§24-50 & 23-662 (minimum base height and maximum height of buildings and setback). R8B (NYC Individual Landmarked Buildings) R8B district.

2019-41-BZ

1 West Street, Block 0015, Lot(s) 1001, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Life Time) to be located on a portion of the 1st floor of an existing building contrary to ZR §32-10. C5-5 Special Lower Manhattan District. C5-5(LM) district.

2019-42-BZ

6502 18th Avenue, Block 5553, Lot(s) 0040, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Blink Fitness) to be located on a portion of the 1st floor and second floors of an existing building contrary to ZR §32-10. C4-2 zoning district. C4-2 district.

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

CALENDAR

**REGULAR MEETING
MARCH 26, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 26, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

156-73-BZ

APPLICANT – The Design Alliance/Gary Maranga, for Albert Einstein College of Medicine, owner.
SUBJECT – Application June 28, 2018 – Extension of Term of a previously approved variance made pursuant to Section 60(3) of the Multiple Dwelling Law, permitting the use of Transient parking for the unused and surplus tenants' space in the required accessory garage of a multiple dwelling which expires on June 26, 2013. R6 and R4 zoning districts.
PREMISES AFFECTED – 1975 Eastchester Road, Block 4205, Lot 2, Borough of Bronx.
COMMUNITY BOARD #2BX

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald's Real Estate Company, lessee.
SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), which expired on December 9, 2018. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.
COMMUNITY BOARD #7Q

209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.
SUBJECT – Application January 3, 2017 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use contrary to underlying use regulations which expired on December 4, 2016. M2-1 zoning district.
PREMISES AFFECTED – 109-09 15th Avenue, Block 4044, Lot 60, Borough of Queens.
COMMUNITY BOARD #7Q

161-11-A

APPLICANT – Amelia Arcamone-Makinano, for Britton Property, Inc., owner; Yung Cheng Chou, President, lessee.
SUBJECT – Application August 13, 2018 – Request for a Reargument and Rehearing pursuant to §§1-12.4 and 1-12.5 of the Board's Rules of Practice and Procedure.
PREMISES AFFECTED – 82-20 Britton Avenue, Block 1517, Lot 3, Borough of Queens.
COMMUNITY BOARD #4Q

APPEALS CALENDAR

2017-202-A

APPLICANT – Law Office of Steven Simicich, for Over Development, Ltd., owner.
SUBJECT – Application June 2, 2017 – Proposed construction of a two-family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3S (SHPD) zoning district.
PREMISES AFFECTED – 43 Cunard Avenue, Block 623, Lot 252, Borough of Staten Island.
COMMUNITY BOARD #1SI

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.
SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.
PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.
COMMUNITY BOARD #3SI

CALENDAR

REGULAR MEETING
MARCH 26, 2019, 1:00 P.M.

Carlo Costanza, Executive Director

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 26, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-108-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for MIP One Wall Street Acquisition, LLC, c/o Macklowe Properties 767 Fifth Avenue owner; Life Time Inc., lessee. SUBJECT – Application July 9, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) to be located on 72,630 square feet of the ground floor, and portions of three below-grade levels of a mixed-use residential and commercial building contrary to ZR §32-10. C5-5 Special Lower Manhattan District (One Wall Street – North Tower is designated as an Individual New York City Landmark).

PREMISES AFFECTED – 1 Wall Street, Block 23, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

2018-141-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Davidov, owner.

SUBJECT – Application August 28, 2018 – Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district.

PREMISES AFFECTED – 110-37 68th Drive, Block 2227, Lot 48, Borough of Queens.

COMMUNITY BOARD #6Q

2018-156-BZ

APPLICANT – Sheldon Lobel, P.C., for PSCH Cypress Avenue Housing Development Fund Corp. d/b/a WellLife Network Inc., owner.

SUBJECT – Application October 12, 2018 – Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 2 residential building (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing contrary to ZR §§ 23-142 (floor area and FAR), 23-142(g) (open space), 23-22 (density regulations), 23-45(a) (front yard), 23-451 (planting requirements), 23-631(d) (front height and setback), 23-632(b) (side setback) and 25-251 (parking). R5 zoning district.

PREMISES AFFECTED – 80-97 Cypress Avenue, Block(s) 3731/3732, Lot(s) 65,54, Borough of Queens.

COMMUNITY BOARD #5Q

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 5, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

624-68-BZ

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

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, a reopening, an extension of the term of a variance previously granted by the Board, which expired on February 7, 2017, and an extension of the time to obtain a certificate of occupancy, which expired on February 7, 2013; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, with continued hearings on January 29, 2019, and March 5, 2019, and then to decision on that date; and

WHEREAS, the Board was in receipt of two (2) letters, from the Auburndale Improvement Association, within whose boundary lines the subject site is located, in support of this application, recommending a five (5) year extension of term and agreeing with the Board’s requiring the property create a landscaped buffer between the subject site and neighboring residential properties, but also citing concerns regarding the applicant’s compliance with prior conditions relating to obstructions of the sidewalk by cars and display materials; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed

inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is comprised of three (3) tax lots located on the north side of Northern Boulevard, bound by Utopia Parkway to the west and 189th Street to the east, partially within an R3-2 zoning district and partially within an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 176 feet of total frontage on Northern Boulevard, 102 feet of frontage on Utopia Parkway, 116 feet of frontage on 189th Street and 18,621 square feet of lot area; and

WHEREAS, tax lot 7 is occupied by a, currently un-tenanted, two- (2) story retail and office (Use Group (“UG” 6) building and tax lot 1 is occupied primarily by a one- (1) story building occupied by a retail flower store (UG 6), insurance office (UG 6) and wholesale plumbing supply company (UG 16), which also uses open space on tax lots 5 and 7 for plumbing supplies storage; and

WHEREAS, the Board has exercised jurisdiction over the subject tax lots since November 13, 1968, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, in a then R3-2 zoning district, the erection of a two- (2) story enlargement to an existing building occupied as a wholesale plumbing supply house, stores and office, on condition that all work substantially conform to drawings filed with the application; the wall and gate to the parking area be located five (5) feet back of the existing parking line; the curb cut be not more than ten (10) feet long; accessory parking be limited to passenger type vehicles; the variance be for a term of ten (10) years, to expire November 13, 1978; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by November 13, 1969; and

WHEREAS, on November 5, 1969, under the subject calendar number, the Board reopened and amended the resolution to extend the time to complete construction for one (1) year, to expire on November 13, 1970; and

WHEREAS, on February 17, 1981, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution, as amended on November 5, 1969, to extend the term for ten (10) years, to expire on November 13, 1988, on condition that plumbing supplies and garbage dumpsters be removed from sidewalk areas; the property be kept clean and free of debris; delivery and pick-up trucks are not to park on sidewalks for loading and unloading; graffiti on the façade of the building be removed; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by February 17, 1982; and

WHEREAS, on September 25, 1984, under the subject calendar number, the Board waived its Rules of Procedure, reopened and amended the resolution, as amended through February 17, 1981, to extend the time to obtain a certificate of occupancy for three (3) years, to expire February 17, 1985; and

WHEREAS, on March 14, 1989, under the subject

MINUTES

calendar number, the Board waived its Rules of Procedure, reopened and amended the resolution, as amended through September 25, 1984, to extend the term of the variance for three (3) years, to expire November 13, 1991, to permit an enlargement to the existing off-street loading dock, substantially as shown on drawings filed with the application, on condition that there be no parking of motor vehicles on the sidewalk; there be no double parking in the street; the dumpster be kept covered at all times and located within an enclosure as shown on approved plans filed with the application; all signs conform to the C1 district regulations; any storage or use of liquid petroleum gas on the premises be allowed only on issuance of the appropriate permit; there be no storage of any kind within the loading area on the Utopia Parkway side of the building; the landscaping be densely planted with evergreen shrubs or trees at least four (4) feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six (6) feet high within three (3) years, and be maintained and replaced when necessary; the open area located on the northerly side of the building remain vacant except for the dumpster enclosure and the planting as shown on plan, and that said area be maintained clean and free of debris at all times; there be no storage of the hi-low on the sidewalk; the second floor be used for offices (UG 6) only; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by March 14, 1990; and

WHEREAS, on July 28, 1992, under the subject calendar number, the Board reopened and amended the resolution, as amended through March 14, 1989, to extend the term for ten (10) years, to expire November 13, 2001, on condition that there be no parking of vehicles on the sidewalk; there be no dumpster on Northern Boulevard; the planning be maintained and replaced when necessary; the premises be maintained graffiti free and be in substantial compliance with BSA-approved plans filed with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 28, 1993; and

WHEREAS, on November 26, 2002, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution, as amended through July 28, 1992, to extend the term of the variance for a period of ten (10) years, to expire January 13, 2011, on condition that the premises be maintained in substantial compliance with approved plans filed with the application; other than as amended the resolution be complied with in all respects; the conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings (“DOB”) ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its

jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on February 7, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for five (5) years, to expire on February 7, 2017, and to allow a one- (1) year extension of time to obtain a certificate of occupancy, by February 7, 2013, on condition that all use and operations substantially conform to plans filed with the application; the site be maintained clean of debris and graffiti; all lighting be directed downward and away from adjacent residences; all landscaping be maintained as reflected on the Board-approved plans; there be no parking on the sidewalks; all signage be maintained in accordance with the BSA-approved plans; trucks pull into the yard fully, not block the sidewalk, and not double park on Northern Boulevard; a sign be maintained directing customers of North Shore Plumbing Supply not to block the sidewalk; the businesses provide a parking monitor to guide trucks making deliveries and entering and exiting the site in a manner to secure the safety of the sidewalk; the conditions be listed on a certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired on February 7, 2017, the applicant seeks a five- (5) year extension of the term; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance and more than one (1) year after the expiration of the time to obtain a certificate of occupancy, the applicant requests waivers, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), respectively, of the Board’s Rules to permit the filing of this application; and

WHEREAS, over the course of hearings, the Board raised concerns with regards to the location of dumpsters and a trash enclosure located at the rear of the site and adjacent to residential lots, the maintenance of the otherwise vacant and paved area at the rear of the site and compliance with the conditions of prior approvals that all landscaping be maintained as reflected on the Board-approved plans; and

WHEREAS, at hearing, the applicant provided plans to remove the trash enclosure and, instead, store all refuse inside the building prior to carting, cease any activity at the rear of the lot, extend existing wooden and chain link fencing and better evidencing of the compliant status of the landscaping with prior Board conditions; and

WHEREAS, in light of the foregoing, the Board finds that a five- (5) year extension of the term of the variance, originally granted in 1968, and a one (1) year extension of

MINUTES

the time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below, as recommended by the Auburndale Improvement Association to ensure on-going compliance with the conditions at this grant, particularly the maintenance of the site free of debris and storage.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rules 1-07.3(b)(2) and 1-07.3(d)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 13, 1968, as amended through February 7, 2012, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of five (5) years, to expire on March 5, 2024, *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘February 14, 2019’-Five (5) sheets; and *on further condition*:

THAT the term of the variance shall expire March 5, 2024;

THAT all landscaping, including that in planter boxes, shall be maintained as reflected on the Board-approved plans and replaced as necessary to maintain a first-class appearance;

THAT all landscaping shall be maintained by a landscaper pursuant to a landscaping contract;

THAT the sidewalks and streets abutting the subject site shall remain unobstructed at all times;

THAT there shall be no display or storage of materials on the sidewalks abutting the subject site;

THAT the rear area shall be maintained free and clear of debris and storage, or otherwise, landscaped;

THAT all lighting be directed downward and away from adjacent residences;

THAT there shall be no parking on the sidewalks;

THAT all signage shall be maintained in accordance with the Board-approved plans;

THAT trucks must pull into the yard fully, must not block the sidewalk, and must not double park on Northern Boulevard;

THAT the business shall provide a parking monitor to guide trucks making deliveries and entering and exiting the site in a manner to secure the safety of the sidewalk;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 624-68-BZ”), shall be obtained within one (1) year, by March 5, 2020;

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s)

not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 5, 2019.

1016-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Opera Owner Inc., c/o Halstead Management Co., LLC, lessee.

SUBJECT – Application November 16, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (New York Sports Club) which expired on May 5, 2017; Amendment to permit a change in hours of operation and to reflect a new operator (Studio IX); Waiver of the Board’s Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, waiver of the Board’s Rules of Practice and Procedure, an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expired on May 5, 2017, and amendments to the same to permit a change in operator and hours of operation; and

WHEREAS, a public hearing was held on these applications on March 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

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

WHEREAS, the subject site is an irregularly shaped lot located on the east side of Broadway between West 76th Street and West 77th Street, in a C4-6A zoning district and the Special Enhanced Commercial District, in Manhattan; and

WHEREAS, the site has approximately 79 feet of frontage along Broadway, 25 feet of frontage along West 76th Street, 134 feet of depth, approximately 9,461 square feet of lot area, and is occupied by a 23-story plus cellar and sub-cellar mixed-use residential and commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the cellar (5,681 square feet of floor space) of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1987, when, under the subject

MINUTES

calendar number, the Board granted a special permit to legalize the operation of a PCE in the cellar of the subject site on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; the special permit be limited to a term of ten (10) years, to expire May 5, 1997; the hours of operation be limited to Monday through Friday, 7:00 a.m. to 12:00 midnight, and Saturday and Sunday, 10:00 a.m. to 8:00 p.m.; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the department; and, substantial construction be completed in accordance with Section 73-70 of the Zoning Resolution; and

WHEREAS, on October 26, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for ten (10) years, to expire on May 5, 2007, and to permit enlargement of the PCE by 731 square feet on condition that all signs be maintained in accordance with BSA-approved plans and that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 26, 2000; and

WHEREAS, on December 8, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term for a period of ten (10) years, to expire on May 5, 2017, and to permit an extension of time to obtain a certificate of occupancy to December 8, 2011, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the DOB endure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit; and

WHEREAS, the applicant also seeks an amendment to reflect a change to the owner and operator of the PCE, to “Studio IX”, reconfiguration of the space for the new

operation, and to reflect new hours of operation: 5:30 a.m. to 10:00 p.m. daily; and

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

WHEREAS, the applicant represents that the former operator of the PCE, New York Sports Club, vacated the subject space at the end of 2018 and that Studio IX has not yet opened, though it anticipates initiating operations in mid-2019; and

WHEREAS, the applicant additionally states that Studio IX intends to offer massage services by licensed massage therapists, but notes that as the facility is not yet operational, no massage therapists have been hired at this time; and

WHEREAS, by letter dated February 21, 2019, the Fire Department confirmed that the premises are protected by a fire alarm, standpipe and sprinkler systems that have been inspected and tested satisfactorily to Department standards, and that the Fire Department has no objection to the Board rendering a decision on this application; and

WHEREAS, at hearing, the Board expressed concerns regarding the ADA-accessibility of the PCE space in the cellar; and

WHEREAS, in response, the applicant represented that the existing elevator is proposed to extend into the cellar for direct access to the PCE from grade; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term, and the subject amendment to permit a change in owner and operator, modification to the hours of operation, and modifications to the existing PCE space, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 5, 1987, as amended through December 8, 2009, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on May 5, 2027, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received November 16, 2018’-Three (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 5, 2027;

THAT the hours of operation shall be limited to the following: 5:30 a.m. to 10:00 p.m. daily;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed,

MINUTES

including that from any gymnasium equipment;

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

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

THAT a new certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 1016-86-BZ”) shall be obtained within one (1) year, by March 5, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 5, 2019.

61-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 21, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (New York Sports Club) located on the second and third floors of a three-story commercial building, which expired on June 1, 2018; Waiver of the Board’s Rules. C4-2A zoning district and Special Bay Ridge District.

PREMISES AFFECTED – 439 86th Street, Block 6035, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit for a physical culture establishment (“PCE”) previously granted pursuant to ZR § 73-36 which expired on June 1, 2018, an extension of time to obtain a certificate of occupancy, which expired on February 3, 2010, and an amendment of the special permit to reflect a change in the hours of operation; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019 and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application on condition that the operator mitigate noise from their air conditioning unit if it is determined by the New York City Department of Environmental Protection (“DEP”) that their unit exceeds the allowable decibel level; and

WHEREAS, the subject site is located on the north side of 86th Street between 4th Avenue and 5th Avenue, in a C4-2A zoning district, in the Special Bay Ridge District, in Brooklyn; and

WHEREAS, the site has approximately 106 feet of frontage along 86th Street, 100 feet of depth, approximately 10,600 square feet of lot area, and is occupied by a three-(3) story commercial building; and

WHEREAS, the subject PCE is located within portions of the second floor (9,340 square feet of floor area) and third floor (7,832 square feet of floor area) with an entrance on the ground floor (285 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 3, 2009, when, under the subject calendar number, the Board granted a special permit to legalize the operation of a PCE on the second and third floor of the subject building on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on June 1, 2018; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by February 3, 2010; the rooftop mechanical units comply with the requirements of the New York City Noise Code; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans and in accordance with the FDNY recommendations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; substantial construction be completed in accordance

MINUTES

with ZR § 73-70; and the Department of Buildings (“DOB”) ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit and time to obtain a certificate of occupancy having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit and more than 30 days after the expiration of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to reflect new hours of operation: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, by letter dated February 21, 2019, the Fire Department stated that the Bureau’s Licensed Public Place of Assembly (“LPPA”) unit inspected the PCE space and issued a violation order (E562464) for occupancy without an operating permit; the premises is protected by fire alarm and sprinkler systems that have been inspected and tested to the Department’s satisfaction; and the Department has no objection to the Board rendering a decision on this application as the Bureau of Fire Prevention will continue to inspect the premises and enforce any outstanding violation orders; and

WHEREAS, at hearing, the Board expressed concerns regarding the operation of a rooftop air conditioning unit and the applicant’s compliance with a condition of the prior resolution that mechanical units comply with the requirements of the New York City Noise Code; and

WHEREAS, in response, the applicant represented that the unit is not in the possession or control of the PCE; and

WHEREAS, the Board also expressed concern regarding the delay in obtaining a certificate of occupancy; and

WHEREAS, in response, the applicant represented that the delay is due to the owner of the subject site, not the tenant PCE space, and that open plumbing work on behalf of the owner must be signed-off by the Department of Buildings prior to the issuance of a certificate of occupancy; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term, extension of time to obtain a certificate of occupancy and the subject amendment to permit a modification to the hours of operation are appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rules § 1-07.3(b)(2) and 1-07.3(d)(2) of

its Rules of Practice and Procedure, *reopens and amends* the resolution, dated February 3, 2009, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on June 1, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application, dated August 1, 2018 (marked ‘Received September 21, 2018’)-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 1, 2028;

THAT the hours of operation shall be limited to the following: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 8:00 p.m.;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and an interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 61-08-BZ”) shall be obtained within one (1) year, by March 5, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 5, 2019.

89-10-BZ

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

SUBJECT – Application February 5, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b) which expired on November 23, 2018. M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, Block 474, Lot 14, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the conversion of the first floor and cellar levels of an existing three-story building to a commercial retail use and expired on November 23, 2018; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Mercer Street, between Broome Street and Grand Street, in an M1-5B zoning district, in the SoHo Cast Iron Historic District, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along Mercer Street, 100 feet of depth, 25,000 square feet of lot area, and is occupied by a three- (3) story building currently under alteration; and

WHEREAS, the Board has exercised jurisdiction over the subject site November 23, 2010, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of the first floor and cellar of the existing three- (3) story building to a commercial retail use (Use Group 6), contrary to ZR §§ 42-10 and 42-14(d)(2)(b) on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; the approval be limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only; substantial construction be completed pursuant to ZR § 72-23, by November 23, 2014; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings (“DOB”) ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on October 27, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to grant an extension of time to complete construction, expiring November 23, 2018, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; substantial construction be completed by November 23, 2018; all conditions from the prior resolution not specifically

waived by the Board remain in effect; DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant submits that the commencement of construction at the site has been delayed for the following reasons: a change in ownership and litigation caused by the failure of an anticipated tenancy to materialize; and

WHEREAS, by Certificate of No Effect (“CNE”) No. 17-1987, dated May 26, 2015, the New York City Landmarks Preservation Commission (“LPC”) permitted exterior alterations to the façade of the subject building, including the removal of historic wood and masonry storefront infill and the installation of a new storefront infill, featuring two (2) paired, wood and glass recessed entrance doors at the northern and southern bays, paired display windows at the central bay with paneled wooden bulkheads and transoms, featuring a wrought iron grille in front of the central transom with louvers behind; the removal and the installation of various windows; the removal of masonry infill at the third floor, and installation of one (1) two-over-two double hung wood window within the restored historic window opening; interior alterations at the cellar and through third floors; and, structural underpinning at the cellar, the demolition and construction of non-bearing partition walls and finishes, and mechanical, plumbing and electrical work; and

WHEREAS, by CNE number 19-7807, dated January 20, 2017, and by CNE No. 19-29064, issued August 6, 2018, and expiring August 6, 2022, LPC permitted work consisting of constructing a temporary rooftop mock-up of wood and orange netting for the purpose of documenting the visibility of the proposed rooftop addition and parapet railings to be filed under a separate application; and

WHEREAS, by letter dated October 25, 2018, LPC states that, at the Public Meeting of October 23, 2018, the Commission voted to approve a proposal to construct rooftop additions at the subject premises, on condition that the visibility of the glass railings and first floor of the addition be eliminated, in consultation with staff, no work begin until a Certificate of Appropriateness has been issued and a Certificate of Appropriateness be issued upon receipt, review and approval of two signed and sealed sets of the final DOB filing drawings for the approved work, incorporating the required changes; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding the applicant’s initial request for a four (4) year extension of time to complete construction where the construction consists, not of an entirely new building, but of interior demolition and alteration to an existing structure; and

WHEREAS, in response, the applicant amended their request to seek a two (2) year extension of time to complete

MINUTES

construction; and

WHEREAS, based upon its review of the record, the Board finds that a two (2) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 23, 2010, as amended on October 27, 2015, so that as further amended this portion of the resolution reads: “to grant a two (2) year extension of time to complete construction to November 23, 2020, on condition:

THAT substantial construction shall be completed, pursuant to ZR § 72-23, by November 23, 2020, as evidenced by an inspection and determination by the Department of Buildings;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 89-10-BZ”) shall be obtained within two (2) years, by November 23, 2020;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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, March 5, 2019.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for continued hearing.

218-58-BZ

APPLICANT – Nasir J. Khanzada, for Norman Dawson, owner.

SUBJECT – Application September 20, 2018 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on July 29, 2018; Amendment to permit the legalization of the addition of an accessory convenience store; Waiver of the Board’s Rules.

PREMISES AFFECTED – 77-40 Hewlett Street, Block 08555, Lot 60, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M. for continued hearing.

771-76-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Intergate Manhattan LLC, owner.

SUBJECT – Application September 10, 2018– Amendment of a previously approved Variance (§72-21) that permitted the installation of an illuminated sign that exceeded the surface area along a district boundary and the height above curb level. The Amendment seeks to modify the previously approved sign to permit a digital sign and the new sign will be able to display messages for any principal use on the zoning lot, as opposed to a single principal use on the zoning lot. C6-4 zoning district.

PREMISES AFFECTED – 375 Pearl Street, Block 114 Lot(s) 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for decision, hearing closed.

130-88-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) which expires on January 29, 2019. C2-2/R4 zoning district.

PREMISES AFFECTED – 3602 Snyder Avenue, Block 4907, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M. for continued hearing.

MINUTES

132-92-BZ

APPLICANT – Willy C. Yuin, R.A., for Daniel Cassella, owner.

SUBJECT – Application October 2, 2017 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted day care use in the cellar of the subject premises in conjunction with a banquet hall use, which expired on February 9, 2017; Waiver of the Rules. R3X, CI-1 SRD zoning district.

PREMISES AFFECTED – 3948 Amboy Road, Block 5142, Lot 22, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M. for continued hearing.

149-97-BZ

APPLICANT – Francis R. Angelino, Esq., for Martin A. Gleason Funeral Home, LLC, owner.

SUBJECT – Application August 2, 2018 – Amendment of a previously approved Variance (§72-21) which permitted an accessory open parking lot (UG 7E) for use with a funeral establishment (UG 7B). The amendment seeks to reflect a reduction in the size of the zoning lot and number of parking spaces from 34 spaces to 29; Extension of Term which expired on August 11, 2018. R2A zoning district.

PREMISES AFFECTED – 150-19 11th Avenue, Block 4515, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M. for continued hearing.

271-09-BZ

APPLICANT – Akerman LLP, for Syracuse Fund II LLC, owner; Jamaica Fitness Group, LLC, lessee.

SUBJECT – Application November 30, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building which is set to expire on January 17, 2019. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M. for postponed hearing.

APPEALS CALENDAR

2017-316-A

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

SUBJECT – Application December 12, 2017 – Proposed development of a one-story and mezzanine warehouse building (UG 16B) not fronting on a mapped street contrary to General City Law §36. M1-1 (Special Richmond District).

PREMISES AFFECTED – 95 Androvette Street, Block 7407, Lot 72, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:0

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for decision, hearing closed.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.

SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-222-BZ

CEQR #18-BSA-001Q

APPLICANT – Gerald J. Caliendo, AIA, P.C., for Avi Tsadok, owner.

SUBJECT – Application July 3, 2017 – Variance (§72-21) to permit the construction of a two-family residence contrary to ZR §23-142 (Floor Area) and ZR §23-45 (Front Yard Requirements). R3A zoning district.

PREMISES AFFECTED – 200-01 116th Avenue, Block 11041, Lot 9, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

MINUTES

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 15, 2017 acting on Department of Buildings (“DOB”) Application No. 421432122, reads in pertinent part:

[...]1

(Objection #10) Proposed one front yard (corner lot) is contrary to ZR 23-45; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3A zoning district, the construction of a two- (2) story plus cellar two- (2) family detached residence that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019, and then to decision on that date; and

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

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

WHEREAS, the Board was in receipt of three (3) form letters in opposition to this application citing concerns over the potential lack of front yard planting, and whether the proposed two- (2) family home is consistent with the neighborhood character; and

WHEREAS, the subject site on the northeast corner of 116th Avenue and 200th Street, within an R3A zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 116th Avenue, 100 feet of frontage along 200th Street, 2,500 square feet of lot area and is currently vacant; and

WHEREAS, the applicant states that the site was previously occupied by a detached single-family residence, constructed prior to 1961 that was demolished pursuant to a 1978 DOB demolition permit and Unsafe Building declaration; and

WHEREAS, the applicant proposes to develop the site with a two- (2) story plus cellar two- (2) family detached residence with two (2) front yards measuring 12’-10” in depth along 116th Avenue and 3’-7” in depth along 200th Street; and

WHEREAS, at the subject site, one (1) front yard with a depth of ten (10) feet and one (1) front yard at least as deep as an adjacent front yard (12’-10”) are required on corner lots pursuant to ZR § 23-45; and

WHEREAS, the applicant asserts that the proposed building is otherwise compliant with the bulk regulations

applicable in the subject zoning district; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), the subject site’s status as a corner lot, vacancy and narrowness are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study demonstrating that, of all 21 corner lots located within the subject R3A zoning district, the subject site is the only corner lot that is vacant and has a lot width of 25 feet; that the balance of those lots located within the R3A are improved with one- (1) or two- (2) family dwellings that do not comply with underlying zoning district regulations, including but not limited to regulations relating to side yard and floor area requirements; and

WHEREAS, the applicant also submitted a permit issued from the Department of Housing and Buildings (Permit No. 1840 on Application No. NB 219), dated March 8, 1950, for masonry work at the premises, reporting such land to be located at the northeast corner formed by the intersection of 116 Avenue and 200 Street with a width of 25 feet and a depth of 100 feet, confirming that the subject site has existed with the same narrow dimension since prior to the December 15, 1961, enactment of the New York City Zoning Resolution; and

WHEREAS, the applicant additionally submits that interior lots are not relevant to a finding that the subject lot is unique because the Zoning Resolution requires such lots to provide only one (1) front yard, pursuant to ZR § 23-45, accordingly, such lots are not similarly encumbered by zoning regulations and, further, that all 21 of the dwellings located within 1,200 feet of the subject site in an R3A zoning district were developed between 1920 and 1950, prior to the adoption of the 1961 Zoning Resolution; and

WHEREAS, the applicant further states that strict conformance with ZR § 23-45 would result in a two- (2) family residence with an exterior width of 13.6 feet, 778 square feet of floor area on the first floor and 683 square feet on the second floor, and would result in at least one (1) dwelling being below the minimum size of 925 square feet, contrary to ZR § 23-23(b); and

WHEREAS, accordingly, the applicant submits that a dwelling with an exterior width of 13.6 feet is too narrow to be livable and, in support of this contention, submitted a study of 78 lots with widths of 25 feet or less located within a 1,200-foot radius of the subject site and in an R3A zoning district, demonstrating that zero are occupied by a dwelling that has a width of 13.6 feet, and that dwellings on these narrow lots range in width from 16 feet to 20 feet; and

WHEREAS, in light of the foregoing, the Board finds that the status of the subject site as a corner lot, its vacancy and narrow width since prior to 1961 create unnecessary hardship and practical difficulty in developing the site in strict compliance with the current underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of

1 The applicant received objections under Sections 23-142 and 23-142(a) of the Zoning Resolution due to the floor area ratio exceeding the maximum allowed in the subject zoning district. Over the course of hearings, the applicant revised the proposed building to comply with ZR § 23-142 and, thus, such waiver is no longer sought nor required.

MINUTES

the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable two-family dwelling, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood because all four (4) of the corner lots located within 200 feet of the subject site contain non-complying front yards, the proposed residence provides a front yard with a depth of 12'-10" on 116th Avenue that is consistent with and matches the adjoining front yards, and the proposed residence is otherwise compliant with applicable zoning regulations; and

WHEREAS, over the course of hearings, the Board raised concern regarding the access to the subject site, installation of a curb cut, and the impact on the existing street tree; and

WHEREAS, in response, the applicant represented that they are coordinating with the NYC Parks Department to locate the driveway access in such a way as to preserve the tree in its existing location; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, based on the materials submitted into the record confirming that the site has had the same narrow width complained of since prior to the enactment of the Zoning Resolution in 1961, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant state that the subject proposal, which requests only a waiver of the minimum front yard requirement and is otherwise compliant with applicable zoning regulations, is the minimum relief required in satisfaction of ZR § 72-21(e); and

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-001Q, dated July 3, 2017; and

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R3A zoning district, development of a two- (2) story plus cellar two- (2) family detached residence that does not comply with the minimum requirements for front yards, contrary to ZR § 23-45; *on condition* that all work shall substantially conform to

drawings filed with this application marked "February 12, 2019"– Ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: two (2) front yards with minimum depths of 3'-7" and 12'-10", as reflected on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23, by March 5, 2023;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-222-BZ") shall be obtained within four (4) years, by March 5, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, March 5, 2019.

2017-268-BZ

CEQR #18-BSA-034Q

APPLICANT – Sheldon Lobel, P.C., for World Chan Buddhist Association, owner.

SUBJECT – Application September 13, 2017– Variance (§72-21) to permit the construction of a three-story plus cellar house of worship (*Buddhist Temple*) (UG 4) with an accessory caretaker's apartment contrary to ZR §24-11 (Floor Area Ratio). R2 zoning district.

PREMISES AFFECTED – 33-73 154th Street, Block 5239, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 10, 2019, acting on New Building Application No. 421300489, reads in pertinent part:

1. ZR 24-111 Proposed floor area exceeds the limit.
2. ZR 24-35 5'-0" side yard is less than minimum 8'-0" required side yard.
3. ZR 24-36 Rear yard for community facility

MINUTES

proposed at 4'-0" and for accessory use residential 3rd floor proposed at 25'-0".

4. . . . ZR 25-31 Insufficient parking provided; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R2 zoning district, the development of a three-story, with cellar, community-facility building for use as a house of worship that does not comply with zoning regulations for floor area, side yards, rear yards and parking, contrary to ZR §§ 24-111, 24-35, 24-36 and 25-31; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on March 5, 2019; and

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

WHEREAS, Community Board 7, Queens, waives its recommendation for this application; and

WHEREAS, residents of the surrounding area submitted testimony in opposition to this application, citing concerns with traffic, parking and the quiet, residential character of the neighborhood; and

WHEREAS, the subject site is located on the east side of 154th Street, between 35th Avenue and 33rd Avenue, in an R2 zoning district, in Queens; and

WHEREAS, the subject site has approximately 50 feet of frontage along 154th Street, 102 feet of depth, 5,082 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop a three-story, with cellar, community-facility building for use as a house of worship and caretaker's apartment (Use Group 4) with 4,680 square feet of floor area (0.92 FAR), side yards with depths of 5 feet to the north and 11 feet to the south, a rear yard with a depth of 4 feet at the first and second floors and 30 feet at the third floor and one accessory off-street parking space; and

WHEREAS, the applicant represents that, at the subject site, floor area may not exceed 2,541 square feet (0.5 FAR) under ZR § 24-111; side yards must have minimum depths of 8 feet under ZR § 24-35; rear yards must have a minimum depth of 30 feet under ZR § 24-36; and a minimum of 12 accessory off-street parking spaces are required under ZR § 25-31; and

WHEREAS, the Board acknowledges that the subject house of worship, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for

the denial of such applications; and

WHEREAS, the consistent with ZR § 72-21, the applicant submits that the proposed building is necessary to accommodate the programmatic needs of the subject house of worship and submitted a programmatic needs demonstrating that the subject house of worship requires space to support the subject house of worship's projected growth to from a total membership of 116 members with 40-50 members in attendance per week to approximately 70 members in attendance per week as well as a permanent location for the membership to gather, which the subject house of worship has been lacking since 2015; and

WHEREAS, the applicant submits that the proposed building provides appropriately sized spaces for use as a meditation hall and a main hall with sufficient height for the placement of religious statuary; that there is sufficient space for circumambulation; that the main hall and the meditation space will accommodate a total of 74 members; that there will be space for book storage on the second floor; that the caretaker's apartment on the third floor will be used as living space, an accessory office and a space for study and reflection; and that the proposed development will be constructed with sound attenuation measures to ensure that the interior provides a quiet space for meditation; and

WHEREAS, the applicant notes that, because of the size of the subject site, an as-of-right development would not meet the programmatic needs of the subject house of worship because the main hall at the first floor would be in adequately sized; the main hall and meditation space would not be permitted simultaneous occupancy because of parking requirements; the caretaker's apartment would not provide sufficient space; and an as-of-right development would not accommodate the current membership or projected growth of the subject house of worship; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the programmatic needs of the subject house of worship create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the subject house of worship is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variances requested are necessary to accommodate the programmatic needs of the subject house of worship with adequate space and facilities; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that the neighborhood is characterized by residential and community-facility uses, with a number of houses of worship in the vicinity; and

MINUTES

WHEREAS, the applicant notes that adjacent to the subject site are two-family residences but that the proposed floor area and proposed rear yard would not adversely affect the surrounding area because the rear yards on the subject block contain existing encroachments (such as garages) that provide a buffer between the proposed building and adjacent residences; and

WHEREAS, the applicant further submitted a floor area study, finding that approximately 50 percent of buildings within the immediate area have 0.5 FAR or greater; and

WHEREAS, with respect to parking, the applicant submits that members will travel to the subject site by walking or by taking public transportation and that there are a number of public transportation options within one block and within walking distance of the subject site; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the drawings were revised to add the proposed parking space (where no parking was originally proposed) and submitted evidence that a second parking space would not be permitted; and

WHEREAS, additionally, the applicant submitted two parking studies—the second conducted at the Board’s direction at hearing in response to community concerns—indicating that no adverse impacts with respect to transportation or parking will result from this application, and the applicant found that, during peak demand, there would be approximately 494 parking spaces available on-street during the morning, 472 during the midday and 488 during the evening; and

WHEREAS, in response to community concerns and the Board’s direction, the applicant reduced the amount of floor area proposed, removed the encroachment of the third floor into the rear yard, reduced the size of the caretaker’s apartment, provided storage for refuse in the cellar, and clarified that accessibility will be provided; and

WHEREAS, at hearing, in response to community concerns regarding sound, the Board inquired as to whether any activities within the proposed building would generate noise, to which the applicant responded that the use of the proposed building will not generate noise and that, to the contrary, the proposed building has been designed with sound attenuation measures to ensure a quiet interior environment, buffered from sounds originating outside the building (which attenuation measures would also prevent interior noise, if any, from being transmitted outside the proposed building); and

WHEREAS, by letter dated December 31, 2018, the Fire Department states that it has no objection to this application; and

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

WHEREAS, the applicant states that the above

practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of programmatic needs of the subject house of worship; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the programmatic needs of the subject house of worship; and

WHEREAS, the applicant further submits that, in order to minimize the size of the caretaker’s apartment, the main kitchen of the subject house of worship will be used to avoid duplicative spaces within the proposed building; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA034Q, dated September 14, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated March 9, 2017, the New York City Landmarks Preservation Commission represents that the proposed project will not result in any adverse impacts on architectural or archaeological resources; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality

MINUTES

Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R2 zoning district, the development of a three-story, with cellar, community-facility building for use as a house of worship that does not comply with zoning regulations for floor area, side yards, rear yards and parking, contrary to ZR §§ 24-111, 24-35, 24-36 and 25-31; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received February 14, 2019”-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 4,680 square feet of floor area (0.92 FAR), a side yard with a minimum depth of 5 feet to the north, a rear yard with a depth of 4 feet at the first and second floors and one accessory off-street parking space, as illustrated on the Board-approved drawings;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-268-BZ”), shall be obtained within four (4) years, by March 5, 2023;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 5, 2019.

2018-120-BZ CEQR #19-BSA-014M

APPLICANT – Bryan Cave Leighton Paisner LLP, for Silverstein MB LLC, owner; Silverstein MB LLC, lessee.
SUBJECT – Application July 19, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (550 West 41st Gym) to be located within a proposed building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 550 West 41st Street, Block 1069, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 6, 2018, acting on DOB Application No. 121203973, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C6-4 zoning district per ZR Section 32-10, and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in an C6-4 zoning district and in the Special Hudson Yards District, a physical culture establishment (“PCE”) on the fourth floor, mezzanine and fourth floor terrace, of a proposed 57-story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019, and then to decision on that same date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application on condition that, in the event of a new PCE operator, the applicant introduce the new PCE operator to the Community Board 4 Land Use Committee and arrange for a tour of the operating PCE; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of West 41st Street and 11th Avenue, in a C6-4 zoning district and in the Special Hudson Yards District, in Manhattan; and

WHEREAS, the site has approximately 197 feet of frontage on West 41st Street, 198 feet of frontage on 11th Avenue, 223 feet of frontage on West 40th Street, 41,849 square feet of lot area, and will be occupied by a 57-story plus cellar mixed-use residential and commercial building in which the PCE will be located; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) permits a PCE located on the roof of a commercial building or commercial portion of a mixed-use building, provided the following findings are made:

- (1) that such *use* shall be an incidental part of a permitted *physical culture or health establishment* located within the same *commercial or mixed building*;
- (2) that such *use* shall be open and unobstructed to the sky;
- (3) that such *use* shall be located on a roof not less than 23 feet above *curb level*;
- (4) that the application for such *use* shall be made jointly by the owner of the *building* and the operator of such *physical culture or health establishment*; and
- (5) that the Board shall prescribe appropriate controls to minimize adverse impacts on the surrounding area, including but not limited to, requirements for the location, size and types of signs, limitations on the manner and/or hours of operation, shielding of floodlights, adequate screening, and the control of undue noise including the amplification of sound, music or voices;

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-

04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant submits that the proposed PCE will occupy 21,700 square feet of floor area within the subject site with a yoga studio, basketball court, a fitness room and fitness mezzanine, spin studio, swimming pool, terrace spaces (7,795 square feet of outdoor space), reception area, juice bar, sauna, lockers, and storage space; and

WHEREAS, the applicant represents that the proposed PCE will operate as “550 West 41st Gym” with the following hours of operation: Monday through Friday, 5:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 6:30 a.m. to 8:00 p.m.; and

WHEREAS, the applicant states that, while residential uses at the subject site are not proposed to begin until the sixth floor, the PCE space will provide sound attenuation measures including sound attenuating flooring and ceilings in the spin studio, special flooring in the basketball court, weight and exercise machine areas, and the pool area will be insulated; specifically, the applicant proposes to install spring isolated flooring in the spin studio, acoustical mat flooring of various thicknesses in the yoga studio, weight and machine areas, neoprene floor mounts in the basketball court, and sound absorbing ceiling material in the pool area, fitness areas, basketball court and spin studio; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the applicant anticipates the PCE use will be consistent with the intent of the Special Hudson Yards District which is designed to promote and protect public health, safety and general welfare; and

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

WHEREAS, the applicant represents that the PCE will contain facilities for classes, instruction and programs for physical improvement body building, weight reduction and aerobics; and

WHEREAS, accordingly, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the applicant states that the PCE use to be located on the roof portion of the subject site, outdoor

MINUTES

terrace areas, is an incidental part of the PCE; is proposed to be open and unobstructed to the sky; will not be less than 23 feet above curb level; and, the application was submitted by the applicant who will be the operator of the PCE and owner of the proposed building; and

WHEREAS, accordingly, the Board finds that the subject PCE use located on the fourth-floor terraces is consistent with those eligible pursuant to ZR § 73-36(b) for the issuance of the special permit; and

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

WHEREAS, the applicant submits that the PCE space will be protected with a wet sprinkler system and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will also be installed within the PCE space; and

WHEREAS, by letter dated January 26, 2019, the Fire Department states that applications for a new fire alarm and fire suppression systems have been filed with the DOB which will cover the proposed PCE space on the fourth floor; units in the Bureau of Fire Prevention have been notified of the application and will inspect the premises during and after construction operations; the Fire Department will require that the pool equipment room, located on the third floor, comply with the following sections of the 2014 NYC Fire Code: Section 3101.4 (supervision of corrosive material), Section 4001.4 (prohibitions to manufacture, store, handle and/or use pyrophoric materials) and Section 2703.5 (hazard identification signs); in addition, ammonium-based fire extinguishers are prohibited; the Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will inspect the premises and will enforce the rules and regulations of the Fire Department; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE proposes to institute measures to reduce any potential noise disturbance and represents that there will be no disadvantages to the community at large; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community and that the proposed special permit use will not interfere with any pending public improvement project; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has

documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Short Form CEQR No. 19BSA014M, received July 24, 2018; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Activities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, an (E) designation (E-137) has been placed on the subject site for hazardous materials, air quality and noise; and

WHEREAS, with respect to hazardous materials, at the subject site, E-137 requires that the fee owner (1) prepare and implement a DEP-approved site investigation to determine the extent of the contamination, if any, at the site; (2) submit the findings of its investigation and, if necessary, a management plan, to the DEP for its review and approval; and (3) implement the DEP-approved management plan; and

WHEREAS, by notice dated October 6, 2016, from the New York City Office of Environmental Remediation, no investigative/remedial work is required relating to hazardous materials for any current or future development of the site; and

WHEREAS, with respect to air quality, at the subject site, E-137 requires the exclusive use of natural gas or a minimum offset distance for the stack locations as specified in an accompanying table; and

WHEREAS, with respect to noise, at the subject site, E-137 requires that future residential/commercial uses provide a closed window condition with minimum attenuation of 35 dBA window/wall attenuation on all facades in order to maintain an interior noise level of 45 dBA and the provision of an alternate means of ventilation, which may include, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit, pursuant to ZR §§ 73-36 and 73-03, and that permitting the subject PCE space, proposed on the fourth floor, mezzanine, and fourth floor outdoor terraces of the subject building, is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of

MINUTES

the New York State Environmental Conservation Law and 6 NYCRR Part 617, Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C6-4 zoning district and the Special Hudson Yards district, a physical culture establishment on portions of the fourth floor, mezzanine and fourth floor outdoor terrace, of a proposed 57-story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application dated September 5, 2018 (marked “Received October 4, 2018”)-Ten (10) sheets and February 11, 2019 (“marked Received February 13, 2019”)-Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 5, 2029;

THAT there shall be no sound amplification permitted on the outdoor spaces of the PCE;

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

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

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

THAT an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection to an FDNY-approved central station—shall be installed and maintained within the PCE space;

THAT minimum 3-foot-wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT a place of assembly permit shall be obtained;

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

THAT a certificate of occupancy indicating the subject calendar number (“BSA Cal. No. 2018-120-BZ”) shall be obtained within four (4) years, by March 5, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, March 5, 2019.

2016-4171-BZ

APPLICANT – Sheldon Lobel, P.C., for Jisel Cruz, owner.
SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the development of a three-story plus penthouse residential building (UG 2) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 823 Kent Avenue, Block 1898, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for continued hearing.

2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.

SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.

PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for adjourned hearing.

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for decision, hearing closed.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – Special Permit (§73-126) to permit a two-story with cellar ambulatory diagnostic or treatment health care facility (UG 4) contrary to ZR §22-14(A). R3X (Special South Richmond

MINUTES

Development District) (Lower Density Growth Management Area).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for adjourned hearing.

2017-270-BZ

APPLICANT – Edward Lauria, P.E., for Daniel Apice, owner.

SUBJECT – Application September 21, 2017 – Special Permit (§73-53) to permit the enlargement of an automotive body repair facility (UG 17B) contrary to ZR §43-121 (Maximum Permitted Floor Area). M1-1 zoning district.

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.

SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries). C4-4 zoning district.

PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

2018-98-BZ

APPLICANT – Akerman LLP, for GC Cross Bay Realty LLC, owner; 140 Cross Bay Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application May 24, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Planet Fitness*) on a portion of the ground floor and the entire second floor of an existing commercial building contrary to ZR §32-10. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard, Block 14030, Lot(s) 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 5, 2019
1:00 P.M.**

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

ZONING CALENDAR

2019-33-BZ

CEQR #19-BSA-091Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Project Rebuild Inc., owner.

SUBJECT – Application February 15, 2019 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required front yard (ZR 23-45) side yard (ZR 23-461, ZR 23-48). R4 zoning district.

PREMISES AFFECTED – 423 Beach 43 Street, Block 15965, Lot 108, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to legalize, on a site within an R4 zoning district, the relocation and construction of a two- (2) family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards contrary to ZR §§ 23-45, 23-48 and 23-461(a); and

WHEREAS, a public hearing was held on this application on March 5, 2019, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Project Relocation-Rebuild Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s

MINUTES

Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Beach 43rd, between Edgemere Drive and Beach Channel Drive, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage, 125 feet of depth, 3,112 square feet of lot area and is occupied by a two- (2) story two- (2) family detached residence; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant now seeks a special permit,

pursuant to ZR § 64-92 to legalize the construction of the two- (2) family residence that is compliant flood-resistant construction but does not comply with the zoning requirements for front yards and side yards; and

WHEREAS, specifically, the subject site has a front yard with a depth of 15 feet and two (2) side yards with widths of three (3) feet each (six (6) feet of total side yards), but, at the subject site, a minimum front yard depth of ten (10) feet or (18) feet is required pursuant to ZR § 23-45, and two (2) side yards, each with a width of at least 5 feet and with a combined minimum width of 13 feet, are required pursuant to ZR § 23-461(a); and

WHEREAS, pursuant to ZR § 23-48, the required total width of side yards for a two- (2) family detached residence may be reduced by four (4) inches per foot by which the width of a zoning lot is less than that required pursuant to ZR § 23-32 (Minimum Lot Area or Lot Width for Residences) if such zoning lot is both (a) less than the prescribed minimum lot width and (b) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; in no event shall the required width of a side yard be less than five (5) feet; and

WHEREAS, pursuant to ZR § 23-32, the minimum lot width for a two- (2) family detached residence in an R4 zoning district is 40 feet and the subject site has a width of 25 feet; and

WHEREAS, pursuant to ZR § 23-33 (Special Provisions for Development of Existing Small Lots), a two- (2) family residence may be developed on a zoning lot that has less than the prescribed minimum lot width if the zoning lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit and the zoning lot meets the applicable density requirement of the zoning district in which it is located; and

WHEREAS, pursuant to ZR § 23-22, the maximum number of dwelling units permitted on the subject site is equal to the maximum residential floor area permitted on the zoning lot divided by 870, the factor for determining the maximum number of dwelling units in an R4 zoning district; and

WHEREAS, the maximum residential floor area permitted at the subject site is 2,334 square feet pursuant to ZR § 23-142 and, therefore, the maximum number of dwelling units permitted at the site is two (2); and

WHEREAS, in satisfaction of ZR §§ 23-33(b) and 23-48(b), the applicant provided deeds for lots immediately adjacent to the subject lot (Lots 107, 109, 15 and 13 on Block 15965) demonstrating that the subject site was owned separately and individually from those adjacent lots both on December 15, 1961, and today; and

WHEREAS, therefore, pursuant to ZR §§ 23-48 and 23-32, the required total width of the side yards at the subject site may be reduced to ten (10) feet; and

WHEREAS, because only six (6) feet of total side yards are provided on the subject site, the applicant requests

MINUTES

a waiver of ZR § 23-48, but no waiver of ZR § 23-32 is required, due to the sub-standard width of the site, because it is developable pursuant to ZR § 23-33; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, side yards and total side yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two- (2) family, mostly detached, residences; the home design follows the urban context of 43rd Street and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA091Q, dated February 15, 2019; and

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* §§ 1-05.1, 1-05.3, 1-05.4, 1-05.6, 1-05.7, 1-09.4 and 1-10.7 of its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to legalize, on a site within an R4 zoning district, the construction of a two- (2) story two- (2) family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards contrary to ZR §§ 23-45, 23-48 and 23-461(a); *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received February 15, 2019"-Thirteen (13) sheets, "Received February 21, 2019"-one (1) sheet; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a front yard with a minimum depth of 15 feet, two (2) side yards with minimum widths of three (3) feet each (a minimum of six (6) feet of total side yards);

THAT the building shall have a fire sprinkler system

in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the building where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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

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

Adopted by the Board of Standards and Appeals, March 5, 2019.

2017-233-BZ

APPLICANT – Sheldon Lobel, P.C., for 446-448 Park Realty Corp., owner.

SUBJECT – Application August 8, 2017 – Variance (§72-21) to allow for the development of six-story plus cellar (UG 2) residential building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 446-448 Park Avenue, Block 1898, Lot(s) 37 & 38, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**SPECIAL HEARING
THURSDAY MORNING, MARCH 7, 2019
10:00 A.M.**

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

APPEALS CALENDAR

2018-166-A

APPLICANT – Queens Neighborhoods United/c/o Tania
Mattos, for AA 304 GC LLC, owner.

SUBJECT – Application October 18, 2018 – Interpretative
Appeal challenging the Department of Buildings permit
issued for the development of a mixed-use building. Appeal
of DOB permit that classifies the retail space occupied by
Target as a UG 6 use.

PREMISES AFFECTED – 40-31 82nd Street aka 40-19 82nd
Street, Block 1493, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to May 21,
2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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March 29, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|----------------------------------|---------|
| DOCKET | 224/225 |
| CALENDAR of April 9, 2019 | |
| Morning | 226 |
| Afternoon | 226/227 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, March 19, 2019**

Morning Calendar228

Affecting Calendar Numbers:

645-59-BZ 10824 Flatlands Avenue, Brooklyn
278-86-BZ 1677 Bruckner Boulevard, Bronx
58-99-BZ 18-10 Utopia Parkway, Queens
16-12-BZ 184 Nostrand Avenue, Brooklyn
67-13-A 945 Zerega Avenue, Bronx
271-09-BZ 132-40 Metropolitan Avenue, Queens
30-58-BZ 184-17 Horace Harding Expressway, Queens
126-93-BZ 1225 East 233rd Street, Bronx
223-00-BZ 272 West 10th Street, Manhattan
67-13-AIV 945 Zerega Avenue, Bronx
2016-4273-BZ 669 Second Avenue, Manhattan
2017-247-BZ 1367 East 24th Street, Brooklyn
2018-20-BZ 2801 Avenue M, Brooklyn
263-15-BZ 45/47 Little Clove Road, Staten Island
2016-4217-BZ 1665 Bartow Avenue, Bronx
2016-4469-BZ 49-23 Astoria Boulevard, Queens
2018-21-BZ 1773 East 22nd Street, Brooklyn
2018-138-BZ 257 West 17th Street, Manhattan

Afternoon Calendar254

Affecting Calendar Numbers:

2017-243-BZ 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Queens
2017-273-BZ 975 East 24th Street, Brooklyn
2018-25-BZ 109 Wortman Avenue, Brooklyn
2018-143-BZ 20 West 14th Street, Manhattan
2018-194-BZ 2317 Avenue K aka 1086 East 24th Street, Brooklyn

**MINUTES of Special Hearing
Wednesday, March 20, 2019**

Morning Calendar255

Affecting Calendar Numbers:

2018-171-BZ 1 East 70th Street, Manhattan

DOCKETS

New Case Filed Up to March 19, 2019

2019-43-A

4132 Victory Boulevard, Block 2636, Lot(s) 0038, Borough of **Staten Island, Community Board: 2**. Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36. C2-1(R3A) district.

2019-44-A

4128 Victory Boulevard, Block 2636, Lot(s) 41, Borough of **Staten Island, Community Board: 2**. Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36. C2-1(R3A) district.

2019-45-A

10002 Farragut Road, Block 8169, Lot(s) 0031, Borough of **Brooklyn, Community Board: 18**. Appeal of a New York City Department of Buildings denial of a determination (ZRD1) dated January 29, 2019 C8-1 district.

2019-46-A

4124 Victory Boulevard, Block 2636, Lot(s) 0043, Borough of **Staten Island, Community Board: 2**. Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district. C2-1(R3A) district.

2019-47-A

4130 Victory Boulevard, Block 2636, Lot(s) 0039, Borough of **Staten Island, Community Board: 2**. Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district. C2-1(R3A) district.

2019-48-BZ

31-45 41st Street, Block 00679, Lot(s) 0023, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the construction of a three-story and cellar, two-family building contrary to ZR §23-49 (Special Provisions for Side Lot Line Walls). R5 zoning district. R5 district.

2019-49-BZ

221 North 14th Street, Block 2639, Lot(s) 7 and 9, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Vital Climbing Gym) contrary to ZR §42-10. M1-1 and M1-2 zoning districts. M1-1/M1-2 district.

2019-50-BZ

116 Duane Street, Block 00150, Lot(s) 0019, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (Trinity Boxing) on portions of the cellar, first and mezzanine level of an existing building contrary to ZR §42-10. C6-2A zoning districts. C6-2A district.

2019-51-A

76 Cupidity Drive, Block 3019, Lot(s) 119, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-52-A

78 Cupidity Drive, Block 3019, Lot(s) 118, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-53-A

80 Cupidity Drive, Block 3019, Lot(s) 117, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-54-A

82 Cupidity Drive, Block 3019, Lot(s) 116, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

DOCKETS

2019-55-A

84 Cupidity Drive, Block 3019, Lot(s) 115, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-56-A

86 Cupidity Drive, Block 3019, Lot(s) 114, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-57-A

88 Cupidity Drive, Block 3019, Lot(s) 113, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

2019-58-BZ

133-35 79th Street, Block 11359, Lot(s) 0001, Borough of **Queens, Community Board: 10**. Special Permit (§73-44) to permit the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (Chuck E. Cheese's) contrary to ZR §32-21. C2-2 zoning district. R4/C2-2 district.

2019-59-BZ

1417 Webster Avenue, Block 2887, Lot(s) 0142, Borough of **Bronx, Community Board: 4**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Blink Fitness) located on the first and second floor of a new commercial building contrary to ZR §32-10. C2-4/R7-1 zoning district. C2-4(R7-1) district.

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

CALENDAR

**REGULAR MEETING
APRIL 9, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 9, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.
SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board’s Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

279-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Bacele Realty Corp., owner.

SUBJECT – Application January 4, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of a bank (UG 6) in a residential zoning district, contrary to §22-00 which expired on January 28, 2018; Waiver of the Board’s Rules. R4/R5B zoning districts.

PREMISES AFFECTED – 27-24 College Point Boulevard, Block 4292, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.

SUBJECT – Application January 8, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home which expires on January 30, 2019. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

277-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation, owner.

SUBJECT – Application June 18, 2018 – Amendment of a previously approved Variance (§72-21) to permit a proposed development of a 12-story, 125-unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). The Amendment seeks an additional twenty (20) affordable dwelling units and an additional partial floor for tenant storage: Extension of Time to Complete Construction which expires on August 19, 2018. R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, Block 2170, Lot(s) 180, 190, Borough of Manhattan.

COMMUNITY BOARD #12M

**REGULAR MEETING
APRIL 9, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 9, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-142-BZ

APPLICANT – Alexander Levkovich, Esq., for George Greene, owner; Iglesia Misioneras De Evangelzcion De Jovanes Cristianos, lessees.

SUBJECT – Application May 5, 2017 – Variance (§72-21) to permit the construction of a House of Worship (Use Group 4A) (*Congregation Iglesia Misioneras De Evangelzcion De Jovanes Cristianos*) contrary to ZR §23-153 (Floor area), ZR §24-11 (Open Space and Lot Coverage), ZR §24-47 (Rear Yard). R6 (Special Ocean Parkway District).

PREMISES AFFECTED – 3000 Coney Island Avenue, Block 7264, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #13BK

2018-103-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jacqueline Mosseri and Alan Mosseri, owners.

SUBJECT – Application Jun2 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to ZR §23-47 (less than the required rear yard). R5 (Special Ocean Parkway) and R5 (Special Ocean Parkway Sub-district).

PREMISES AFFECTED – 936 Avenue R, Block 6685, Lot 15, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #15BK

2018-152-BZ

APPLICANT – Law Office of Fredrick A. Becker, for MC 71 Fifth Avenue Realty LLC, owner; WRII, LLC dab The Well, lessee.

SUBJECT – Application September 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Well*) to be located in portions of the cellar and first floor of an existing eleven story commercial building contrary to ZR §32-10. C6-4M Ladies Mile Historic District.

PREMISES AFFECTED – 2 East 15th Street aka 71 Fifth Avenue, Block 842, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 19, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

645-59-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Board’s Rules. C2-3/R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, a reopening, and an extension of the term of a previously granted variance that permitted the operation of a gasoline service station and accessory convenience store, which expired on October 7, 2015; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on January 29, 2019, and March 19, 2019, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the east corner of Flatlands Avenue and East 108th Street, in an R5D (C2-3) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 202 feet of frontage on Flatlands Avenue, 90 feet of frontage on East 108th Street, 19,450 square feet of lot area and is occupied by a one- (1) story gasoline service station and accessory building (Use Group (“UG”) 16B); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 12, 1960, when, under the subject calendar number, the Board granted a variance of the

use district regulations, pursuant to Section 7f, to permit for a period of 15 years, to expire on January 12, 1975, the increase the area of the present gasoline service station, then in a business use district, the installation of three (3) new pumps, two (2) new curb cuts and a post standard and sign, on condition that the work be done in accordance with the drawings filed with the application; the walls of the existing accessory building be repaired and made presentable; the entire lot be paved with steam cinders with an asphalt binder and property rolled; a woven wire fence be constructed on the rear and side lot lines; all vending machines be removed; the parking of tow trucks on the street carrying advertising signs be discontinued; the signs be fixed signs advertising only the brand of gasoline on sale and project not more than four (4) feet beyond the building line; all laws, rules and regulations applicable be complied with; and, all permits, including a certificate of occupancy be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by January 12, 1960; and

WHEREAS, on March 13, 1962, under the subject calendar number, the Board amended the resolution to extend the time to obtain permits and complete the work for one (1) year, to March 13, 1963, and required that a certificate of occupancy be obtained; and

WHEREAS, on July 17, 1962, under the subject calendar number, the Board further amended the resolution, to reflect the merger of adjoining tax lots 1 and 8 into tax lot 2, by adding “that the area of the plot shall be substantially reduced and the work shall be done substantially as shown on revised drawing of proposed condition marked ‘Received June 26, 1962’ 2 sheets; that the portion of the plot formerly known as Lot No. 1, which was granted under Section 7f, shall be for a term of 15 years from January 12, 1960; that the balance of the plot, formerly known as Lot Nos. 2 and 8, shall remain as a permanent gasoline service station as established prior to the enactment of the Zoning Resolution on June 28, 1940, when the use district was undetermined; *on condition* that other than as herein *amended* the resolution above cited shall be complied with in all respects;” and

WHEREAS, on October 7, 1975, under the subject calendar number, the Board waived its Rules of Procedure, reopened and further amended the resolution to extend the term for ten (10) years, to expire on October 7, 1985, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on November 19, 1985, under the subject calendar number, the Board reopened and further amended the resolution, pursuant to ZR §§ 11-411 and 11-412, extended the term for ten (10) years, to expire on October 7, 1995; eliminated the future gasoline pump island located on the East 108th Street side of the station, substantially as shown on revised drawings of proposed conditions submitted with the application; on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as

MINUTES

amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by November 19, 1986; and

WHEREAS, on May 19, 1987, under the subject calendar number, the Board waived its Rules of Procedure, reopened and further amended the resolution to extend the time to obtain a certificate of occupancy for one (1) year, by November 19, 1987; and

WHEREAS, on July 13, 1993, under the subject calendar number, the Board reopened and further amended the resolution, pursuant to ZR § 11-412, to permit the demolition of the existing accessory building, the erection of a new smaller accessory building with a retail convenience store and the installation of a metal canopy over six (6) new concrete pump islands on condition that the landscaping be installed and adequately maintained; the premises be free and clean of graffiti and debris and in substantial compliance with the proposed conditions drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed within one (1) year, by July 13, 1994; and

WHEREAS, on April 23, 1996, under the subject calendar number, the Board reopened and further amended the resolution to extend the term, to expire on October 7, 2005, on condition that the premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 23, 1997; and

WHEREAS, on December 19, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to extend the time to obtain a certificate of occupancy for two (2) years, by December 19, 2002; and

WHEREAS, on March 28, 2006, under the subject calendar number, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on October 7, 2015, on condition that the use substantially conform to drawings filed with the application; there be no parking on the sidewalk; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

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

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(3)(i) to permit the filing of

this application more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, the Board notes that aerial and satellite imagery of the site demonstrates the continuous operation of a gas service station and, accordingly, that substantial prejudice would result absence the grant of a waiver; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of the term of the variance previously authorized pursuant to the 1916 Zoning Resolution; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the poor condition of a trash enclosure on the site, which required both repair and repainting, the shielding of lights located on the site to prevent light spread to adjoining properties, and excessive signage displayed on the site; and

WHEREAS, in response, the applicant provided photographs evidencing the repair and painting of the trash enclosure, removal of a banner sign from the rear fence and the installation of a light shield as requested; and

WHEREAS, by letter dated December 18, 2018, the Fire Department stated that a review of Fire Department records indicates that the subject automotive service station is current with its Fire Department permits with respect to the storage of combustible liquids, leak detection equipment, underground storage tank and fire suppression (dry-chemical) system; and that the Department has no objection to the granting of this application; and

WHEREAS, in light of the foregoing, the Board finds that the requested ten (10) year extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals, *waives* § 1-07.3(b)(3)(i) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 12, 1960, as amended through March 28, 2006, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked ‘Received sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2025;

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

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

THAT all fencing shall be maintained in good condition;

THAT all signage shall comply with C1 zoning regulations;

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

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

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 645-59-BZ”)

MINUTES

shall be obtained within one (1) year, by March 19, 2020; 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, March 19, 2019.

278-86-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 29, 2013 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (White Castle), which expired on November 26, 2011, amendment to the plans, and Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a special permit, previously granted to permit the operation of an eating and drinking establishment with accessory drive-through facilities pursuant to ZR § 73-243, which will expire on June 17, 2019; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 9, the Bronx, recommends approval of the application on condition that the operator of the subject site provide the Community Board with contact information; and

WHEREAS, the subject site is bound by Bruckner Boulevard to the south, Metcalf Avenue to the west and Fteley Avenue to the east, partially within an R5 (C1-2) zoning district and partially within an R5 zoning district, in the Bronx; and

WHEREAS, the site has approximately 200 feet of frontage on Bruckner Boulevard, 275 feet of frontage on Metcalf Avenue, 250 feet of frontage on Fteley Avenue, 52,400 square feet of lot area and is occupied by a one- (1) story eating and drinking establishment with drive-through and accessory on-site parking for 56 vehicles, operated as White Castle; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since November 25, 1986, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, permitting the addition of a drive-through facility to an existing Use Group (“UG”) 6 eating and drinking establishment for a term of five (5) years, expiring November 25, 1991, on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; the loudspeaker on the menu board be operated at a decibel level which cannot be heard beyond the lot line of the subject property; outdoor lighting face downward and away from adjoining residences; all fences and landscaping be adequately maintained at all times and replaced when necessary; the conditions appear on the certificate of occupancy; the Department of Buildings (“DOB”) issue no permits for a period of 31 days from the date of the resolution; the development, as approved, be subject to verification by the DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with ZR § 73-70, by November 25, 1987; and

WHEREAS, on April 7, 1992, under the subject calendar number, the Board reopened and amended the resolution to extend the term for ten (10) years, to expire November 25, 2001, on condition that the premises substantially conform to revised drawings of existing conditions filed with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 7, 1993; and

WHEREAS, on December 4, 2001, under the subject calendar number, the Board reopened and further amended the resolution to permit the continuation of the drive-thru facility use, on condition that the term of the special permit shall be limited to ten (10) years from November 25, 2001, expiring November 25, 2011; the conditions appear on the certificate of occupancy; the premises be maintained in substantial compliance with the proposed conditions plans submitted with the application; other than amended, the resolution be complied with in all respects; and a certificate of occupancy be obtained within 18 months, by June 4, 2003; and

WHEREAS, on April 24, 2012, under BSA Cal. No. 167-11-BZ, the Board permitted the reconstruction of 3,190-square-foot restaurant with drive-thru, three (3) curb cuts, 37 parking spaces and installation of associated signage (Menu Board) in an R5 (C1-2) zoning district, on condition that all work substantially conform to drawings, as they apply to the objections, filed with this application; the term of the grant expire on April 24, 2017; the premises be maintained free of debris and graffiti; parking and queuing space for the drive-through be provided as indicated on the BSA-approved plans; all landscaping and/or buffering be maintained as indicated on the BSA-approved plans; exterior lighting be directed away from the nearby residential uses; all signage conform with the underlying C1 zoning district regulations;

MINUTES

the above conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; substantial construction be completed in accordance with ZR § 73-70, by April 24, 2016; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on June 17, 2014, under the subject calendar number, the applicant represented that the construction contemplated under BSA Cal. No. 167-11-BZ was never undertaken, that the owner sought to surrender that grant, waive the Board's Rules of Practice and Procedure and reinstate the special permit approved under the subject calendar number, amend that special permit to allow a minor enlargement (an increase of 34 sq. ft.) of the existing building, an increase in the surface area of the service window, minor modifications to the site plan, and extend the term of the special permit for an additional five (5) years, and the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution under the subject calendar number to permit the noted modification and extend the term of the special permit for an additional five (5) years, to expire on June 17, 2019, on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; signage comply with C1 regulations; the conditions and all relevant conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by June 17, 2015; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the previous term expiring on June 17, 2019, the applicant seeks the subject relief; and

WHEREAS, the applicant states that the drive-through facility provides reservoir spaces sufficient for ten (10) cars in satisfaction of ZR § 73-243(a); that the drive-through facility will cause minimal interference with traffic flow in the immediate area in satisfaction of ZR § 73-243(b); that the 57 on-site accessory parking spaces comply with parking regulations in satisfaction of ZR § 73-243(c); that the character of the commercially-zoned street frontage within 500 feet of the site remains oriented towards motor vehicle traffic in compliance with ZR § 73-243(d); that a drive-through facility has operated at this premises without complaints since 1987, when the Board granted the original special permit, lighting is directed as not to shine on neighboring residential properties, and the location of the menu board speaker, 100.5' from the nearest residence, are

all evidence the site operates without adverse impact on nearby residences in satisfaction of ZR § 73-243(e); and that the existing six- (6) foot-high chain link fence with privacy slats between the subject site and the adjacent residential area is adequate buffering adequate in satisfaction of ZR § 73-243(f); and

WHEREAS, by letter dated March 9, 2019, the Fire Department states that a review of Department records indicates that the subject eating and drinking establishment ("White Castle") is current with its Fire Department permits with respect to fire alarm and rangehood suppression systems and storage of liquid gases, and that the Fire Department has no objection to the granting of this application; and

WHEREAS, in accordance with ZR § 73-03(f), the Board finds the circumstances warranting the original grant still maintain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, therefore, the Board finds that the requested five (5) year extension of term for the subject special permit is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 25, 1986, as amended through June 17, 2014, so that as amended this portion of the resolution reads: "to permit the extension of the term of the special permit for an additional five (5) years, to expire June 14, 2024; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received December 14, 2018'-Ten (10) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 17, 2024;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the nearby residential uses;

THAT signage shall comply with underlying C1 zoning district regulations;

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

THAT a new certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 278-86-BZ"), shall be obtained within one (1) year, by March 19, 2020;

THAT all signage shall comply with the underlying C1 zoning district regulations;

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

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

MINUTES

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, March 19, 2019.

58-99-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory automotive repair which expires on October 26, 2019. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 18-10 Utopia Parkway, Block 5743, Lot 75, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for reopening and an extension of term to a previously granted variance that permitted the operation of a gasoline service station and accessory automotive repair, which expires on October 26, 2019; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 19, 2019, and then to decision on that same date; and

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

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

WHEREAS, a representative of the Auburndale Improvement Association, within whose boundary lines the subject site is located, provided testimony at public hearing, stating that the organization has not received any complaints about the operation of the subject site; requesting that the cracked sidewalks surrounding the site be replaced, the dumpster on the site be enclosed and a portion of the retaining wall in poor condition be repaired; and that, if these issues be resolved, the organization has no objection to a ten (10) year extension of term; and

WHEREAS, the subject site is bound by Utopia Parkway to the east, 18th Avenue to the north, 19th Avenue to the south, and 169th Street to the west, in an R3-2 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 201 feet of

frontage along Utopia Parkway, 31 feet of frontage along 18th Avenue, 81 feet of frontage along 19th Avenue, 195 feet of frontage along 169th Street, 10,860 square feet of lot area and is occupied by a one- (1) story gasoline service station, accessory automotive repair building and eight (8) accessory off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 1, 1959, when, under BSA Cal. No. 182-52-BZ, the Board granted a variance, for a term of 15 years, to expire December 1, 1974, to permit, then in a local retail use district, the erection and maintenance of a gasoline service station, lubritorium, minor auto repairs, car washing ,office and sales, storage and parking of motor vehicles, on condition that the work be done in accordance with drawings filed with the application, except that the exterior of the accessory building be redesigned to conform with the architecture of the dwelling buildings in the neighborhood; the working drawings be submitted to the Board for approval before they are submitted to the Building Department; the vents from the gasoline storage tanks be taken underground to the accessory building and carried up in a masonry enclosure similar to a chimney as part of the accessory building; the height of the masonry enclosure and the vents be not more than three (3) feet above the roof of the building; the 5’-6” high walls shown along 169th Street and 19th Avenue be of the same face brick as used on the building; the pumps be placed not less than 15 feet back from the street line; the flood lights be eliminated; the owner arrange with the City to plant trees along the sidewalk of 169th Street and 19th Avenue; the operation of the gasoline station not extend beyond 11:00 p.m.; all laws, rules and regulations applicable be complied with; all permits, including a certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by December 1, 1975; and

WHEREAS, on July 6, 1960, under BSA Cal. No. 182-52-BZ, the Board approved working drawings, as to the arrangement and design, as being in substantial compliance with the terms and conditions of the resolution adopted by the Board on December 1, 1959, except that the toilet rooms be rearranged so that the doors to the rooms are not contiguous; and

WHEREAS, on March 11, 1975, under BSA Cal. No. 182-52-BZ, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire March 11, 1985, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on April 16, 1985, under BSA Cal. No. 182-52-BZ, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire March 11, 1995, to eliminate the five (5) foot wide planted area along 19th Avenue as previously required, and to permit the existence of the dual floodlight, substantially as shown on revised drawings filed with the application, on condition that the dual floodlight be directed away from the

MINUTES

residential homes and be used for night security only; the street trees on 19th Avenue and 169th Street be planted in accordance with the requirements of the Department of Parks and be planted within six (6) months, by October 16, 1985; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than herein amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 16, 1986; and

WHEREAS, on December 10, 1985, under BSA Cal. No. 182-52-BZ, the Board reopened and further amended the resolution to permit the erection of a six (6) foot high 100% slatted chain link fence along the 169th Street side of the station in lieu of the 5'-6" high brick wall as previously approved, substantially as shown on revised drawings filed with the application, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 26, 1999, under the subject calendar number, the Board granted an application re-establishing the subject gasoline service station and automobile repair facility use pursuant to ZR § 11-411, then in an R6 zoning district, on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; the term of the variance be limited to ten (10) years, expiring October 26, 2009; signage be provided in accordance with BSA-approved plans; the business operation not extend beyond 11:00 p.m.; fencing and screening be provided in accordance with BSA-approved plans; lighting be provided in accordance with BSA-approved plans and be positioned down and away from the adjacent residential uses; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings ("DOB") for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a new certificate of occupancy be obtained within one (1) year, by October 26, 2000;

WHEREAS, on February 25, 2003, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution¹, adopted on October 27, 1999, to permit the extension of time to obtain a certificate of occupancy for an additional two (2) years, by February 25, 2005, and to permit the erection of a new metal canopy over new concrete pump islands, on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; there be no coin-operated car washes on the premises; the

conditions, and all conditions from prior resolutions, appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the DOB ensure compliance withal other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on September 20, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution, initially adopted on October 27, 1999, to extend the term for a period of ten (10) years, to expire October 26, 2019, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and; the DOB ensure compliance withal other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

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

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the absence of a trash enclosure on the site, the parking of vehicles on the sidewalk, and the poor condition of the sidewalk; and

WHEREAS, in response, the applicant agreed to replace the sidewalks surrounding the site and construct a trash enclosure at the corner of 19th Avenue and Utopia Parkway, enclosing both the dumpster and a fuel oil above ground storage tank, increased the number of off-street accessory parking spaces on the site from seven (7) to eight (8) and provided an operational plan for the subject site to address the Board's concerns, which the applicant agreed to being incorporated as conditions of this grant; and

WHEREAS, the applicant additionally requested a change to automobile service station facility's hours of operation to 6 a.m. to 10 p.m., seven days a week; and

WHEREAS, the Board requested that the applicant revise these proposed hours in light of the subject site's location, surrounded on all sides by an R3-2 zoning district, and the applicant revised the proposed hours of operation to Monday through Saturday, 6 a.m. to 7 p.m., and closed on Sunday; and

WHEREAS, by letter dated December 20, 2018, the Fire Department stated that a review of Fire Department

¹ To the extent this resolution references the extension of time of a variance that expired on April 10, 2001, a review of Board records demonstrates this information is incorrect. The variance did not expire until October 26, 2009.

MINUTES

records indicates that the subject automotive service station is current with its Fire Department permits with respect to storage of combustible liquids, leak detection equipment, underground storage tank and fire suppression (dry-chemical) system, and that the Fire Department has no objection to this application; and

WHEREAS, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 26, 1999, as amended through September 20, 2011, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received March 19, 2019”-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 26, 2029;

THAT the hours of operation for the automotive service station shall be limited to Monday through Saturday, 6:00 a.m. to 7:00 p.m., and closed on Sunday;

THAT the station shall be equipped and maintained with security cameras on the building that monitor the entirety of the site and function 24 hours per day, seven (7) days per week and shall also be utilized to monitor customer vehicles so that any prohibited parking on the Utopia Parkway sidewalk can be documented to assist in preventing future occurrences;

THAT an attendant shall monitor both the property and the Utopia Parkway sidewalk during normal business hours to ensure vehicles visiting the station only park on site in designated parking stalls and not on the sidewalk; if vehicles are observed parking on the sidewalk, the attendant shall immediately notify the vehicle owner to move their car to an on-site parking stall or find another location off of the property (i.e. side street) until such time an on-site parking stall becomes available;

THAT signs shall be posted and maintained on the north and east sides of the building adjacent to Utopia Parkway notifying customers of allowed parking locations and will read as follows (or equivalent): “NOTICE: CUSTOMER PARKING RESTRICTED TO DESIGNATED ON-SITE PARKING STALLS ONLY. PARKING ON UTOPIA PARKWAY SIDEWALK IS PROHIBITED;”

THAT the sidewalks, from the property line to the curb, surrounding the site on all frontages shall be replaced and maintained in a first-rate condition with tree-pits provided;

THAT the knee-high wall and any buckling portions of fencing located on 169th Street shall be repaired and maintained in a first-rate condition;

THAT there shall be no storage of vehicles on the site other than those vehicles awaiting service;

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

THAT all fencing shall be maintained in good condition;

THAT all signage shall comply with C1 zoning regulations;

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

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

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 58-99-BZ”) shall be obtained within one (1) year, by March 19, 2020; 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, March 19, 2019.

16-12-BZ

CEQR #12-BSA-070K

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application April 2, 2015 – Amendment of a previously approved Special Permit (§73-19) permitting a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). The amendment seeks changes to the interior, an increase in the height of the building. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 01753, Lot 0042, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 11, 2015, acting on New Building Application No. 320416867, reads in pertinent part:

“The proposed amendment is contrary to BSA Calendar Number 16-12-BZ and must be referred to the Board of Standards and Appeals. The proposed amendment to increase the height, make minor changes to the building footprint, and to make interior configuration changes is contrary to BSA Calendar Number 16-12-BZ”; and

WHEREAS, this is an application under ZR § 73-11 for an amendment to a special permit for a school, in an M1-2 zoning district, previously granted by the Board, to allow minor interior changes to and a change to the height of

MINUTES

the proposed building; and

WHEREAS, this application has been brought on behalf of Congregation Adas Yereim (the "School"), a not-for-profit educational institution; and

WHEREAS, a public hearing was held on this application on October 27, 2015, after due notice by publication in *The City Record*, with continued hearings on December 15, 2015, April 5, 2016, and closed on May 17, 2016. On October 14, 2016 it was taken off-calendar. On September 27, 2018 it was reopened and closed for decision on October 30, 2018, subsequent reopening on January 29, 2019, and then to decision on March 19, 2019; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, citing concerns with outstanding violations at the subject site and community opposition; and

WHEREAS, the subject site is located on the northwest corner of Nostrand Avenue and Willoughby Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 200 feet of frontage along Nostrand Avenue, 120 feet of frontage along Willoughby Avenue, 21,480 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 2014, when, under the subject calendar number, the Board granted a special permit to allow the School on condition that the School's building be limited to 55,509 square feet of floor area (2.58 FAR) and a building height of 38'-7³/₄", as illustrated on the Board-approved plans,¹ that DOB not issue a certificate of occupancy until the applicant has provided it with approval by the Department of Environmental Protection ("DEP") of the Remedial Closure Report, that interior noise levels be maintained at 45 dBA or below within the School in accordance with the noise attenuation notes on the Board-approved drawings, that bus drivers not idle in front of the building, the School or the site and that any change in the use, occupancy, or operator of the School requires review and approval by the Board; and

WHEREAS, the applicant seeks an amendment to allow minor interior changes and a change to the height of the proposed building; and

WHEREAS, more specifically, the applicant proposes to construct a four-story, with cellar, community-facility building with building height of 47 feet and a total of 71,075 square feet of floor area (3.31 FAR) as follows: 694 square feet of floor space in the cellar, used only for utilities;

21,316 square feet of floor area in the basement, including two lobbies, an auditorium, a meat kitchen, stair storage, restrooms, administrative offices, a conference room, mechanical space, a loading area, refrigerated trash storage; 10,599 square feet of floor area on the mezzanine at the first floor, including a lunch room, a dairy kitchen, closets, restrooms and offices; 18,755 square feet of floor area on the second floor, including classrooms, a multipurpose room, teachers' lounges, book closets and restrooms; 18,755 square feet of floor area on the third floor, including classrooms, a library with book storage, a lunch room, a computer laboratory, offices, therapy space and a teachers' lounge; 1,650 square feet of floor area on the roof, which is not to be used by the School or by its students; and 685 feet of floor space on the first level of the bulkhead, 320 square feet of floor space on the second level of the bulkhead and 120 square feet of floor space in the elevator machine room; and

WHEREAS, the applicant states that the proposed interior changes include relocating the auditorium from the cellar to the basement, adding a kitchen, removing the entrance to the School, adding mechanical space and administrative office space, reducing the floorplate of the first floor, removal of a therapy room, the addition of a computer laboratory and elimination of the rooftop play area; and

WHEREAS, the applicant states that the bulk of the proposed building does not create a new non-compliance or increase the degree of non-compliance with applicable zoning regulations, in accordance with ZR § 73-03(g); and

WHEREAS, the Board notes that no applicable bulk regulations have been waived herein, so DOB must ensure compliance with bulk regulations and other applicable zoning regulations; and

WHEREAS, in response to questions from the Board regarding concerns from the community, the applicant revised the drawings to remove any elevator access to the roof of the proposed building; and

WHEREAS, regarding questions from the Board about the effect of the building height on the built character of the surrounding area, the applicant studied the surrounding area, finding that the proposed height of 47 feet comports with existing conditions in the neighborhood; and

WHEREAS, in response to community concerns and direction from the Board, the applicant represents that all penalties for outstanding violations have been paid; and

WHEREAS, the applicant states that a lease provided to the Board reflects that there is bus parking available to the School at 101 Varick Avenue, Brooklyn, for six (6) school buses and that such use complies with the Zoning Resolution; and

WHEREAS, the Board and the applicant referred the application to the New York City Department of Transportation's ("DOT") Division of Transportation Planning and Management, School Safety Unit; and

WHEREAS, by letter dated March 15, 2016, DOT states that it has no objection to this application; and

¹ The applicant states that the Board's resolution, dated January 14, 2014, under the subject calendar number, indicates a maximum building height of 48 feet but that the approved building height was 38'-7³/₄", as illustrated on the Board-approved plans.

MINUTES

WHEREAS, the applicant submits that the following changes are proposed with respect to buses: the second lane from the western curb will become a bus lane and a right turn lane; the west curb will no longer have a 4:00 p.m. to 7:00 p.m. “no standing” regulation; the east curb will have a 7:00 a.m. to 10:00 p.m. and 4:00 p.m. to 7:00 p.m. “no standing” regulation; and the bus stop on Nostrand Avenue, just north of Dekalb Avenue, will be relocated to the south of Dekalb Avenue (approximately 900 feet south of the subject site); and

WHEREAS, by letter dated June 7, 2016, DOT states that, reviewing the School’s bus loading plan for the curb lane on the west side of Nostrand Avenue, directly in front of the subject site, between Willoughby Avenue and Vernon Avenue, it has no objection to this application; and

WHEREAS, at hearing after reopening, the Board expressed concerns with modifications to the drawings that were not brought to the Board’s attention; and

WHEREAS, in response, the applicant revised the drawings to those previously considered along with minor changes to reflect a consistent building height of 47 feet; and

WHEREAS, the applicant further states that changes to the plans include the following: adding Board-discussed notes and environmental notes to all floor plans; correcting the mean curb elevation throughout; and correcting discrepancies in the dimensions of the proposed building with no change to room layouts or overall building envelope or height; and

WHEREAS, the applicant states that the bulkhead has been reduced in height by 4’-4” by moving the elevator machine room to the side of the elevator overrun room; and

WHEREAS, the Board notes that it conducted an environmental review of the original application under the subject calendar number and documented relevant information about the project in the Final Environmental Assessment States (EAS) CEQR No. 12BSA070K, dated April 13, 2012; and

WHEREAS, by letter dated May 6, 2016, DEP states that, with respect to noise, the proposed project would not result in any significant adverse noise impact; and

WHEREAS, by letter dated August 24, 2018, DEP states that, with respect to air quality, the proposed project would not result in any significant adverse air quality impact, noting that the air quality assessment included the analysis of potential air quality impact from the proposed project on its surrounding area and potential effects from nearby industrial sources on the proposed project; and

WHEREAS, the applicant provided the Board with a Final Technical Memorandum dated February 27, 2019, updating the 2012 EAS; and

WHEREAS, the Technical Memorandum states no significant adverse impacts are projected on or by the proposed action provided that the following mitigation measures are incorporated into the plans: Ensure that windows on the western façade are inoperable, Provide alternate means of ventilation, For windows and walls facing east, towards Nostrand Avenue, south towards Willoughby

Avenue, and north towards the building at 182 Nostrand Avenue, the minimum attenuation required due to a maximum L10 of 75.0 dBA would be an OITC rating providing 31 dBA of attenuation, For windows and walls on the second and third floors facing Sandford Street along the western wall of the proposed Yeshiva, as well as facing north towards the first-floor rooftop, the minimum attenuation required due to an L10 of 77.1 dBA would be an OITC rating providing 33 dBA of attenuation, and Implement EBC’s recommendations to address vapor intrusion with a subslab depressurization system; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the Board’s conditions and that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested amendment is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated January 14, 2014, so that as amended this portion of the resolution shall read: “to *permit* an amendment to allow minor interior changes to and a change to the height of the proposed building; *on condition* that all work and site conditions shall conform to drawings filed with this application marked ‘Received March 19, 2019’-thirteen (13) sheets and ‘April 27, 2016’-one (1) sheet; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a total of 71,075 square feet of floor area (3.31 FAR) and a building height of 47 feet, as illustrated on the Board-approved drawings;

THAT due to air quality concerns, there shall be no play area permitted on the roof of the first floor;

THAT there shall be no access or play area on the roof of the first floor or the building roof;

THAT there shall be no use of the building as a commercial catering establishment or banquet hall, and the building shall exclusively be for the use of school programs;

THAT there shall be no rental of the auditorium to non-school events;

THAT there shall be no elevator access to the roof of the building;

THAT there shall be a closed window condition with mechanical ventilation on the façade against the rear, as illustrated on the Board-approved plans;

THAT in order to ensure an interior noise level of 45 dBA or less, windows and walls, facing east towards Nostrand Avenue, south towards Willoughby Avenue and North towards the building at 182 Nostrand Avenue, shall have an OITC rating providing 31 dBA of attenuation;

THAT in order to ensure an interior noise level of 45 dBA or less, windows and walls, on the second and third floors facing Sandford Street along the western wall of the proposed building, as well as facing north towards the play area on the first-floor rooftop, shall have an OITC rating providing 33 dBA of attenuation; furthermore, these

MINUTES

windows shall be inoperable and alternate means of ventilation shall be provided;

THAT a Vapor Barrier / Subslab Depressurization System should be installed beneath the slab for potential vapor intrusion as specified in the Remedial Action Plan;

THAT the entire building shall be fire protected with sprinklers and equipped with a fire alarm system connected to a central station in accordance with the New York City Building Code and approved by the Fire Department;

THAT except for pickups and drop-offs, school buses shall be parked in the off-site location provided at 101 Varick Avenue, Brooklyn, pursuant to valid lease agreements;

THAT bus drivers shall not idle or park in front of the building, the School or the site;

THAT the owner shall obtain a “no parking” sign for buses except during pickups and drop-offs;

THAT DOB shall not issue a certificate of occupancy until the applicant has provided it with approval by DEP of the Remedial Closure Report;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

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

THAT a certificate of occupancy shall be obtained within four (4) years, by March 19, 2023;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 19, 2019.

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a rehearing of the subject application to consider substantial new evidence not available at the time of the initial hearing pursuant to § 1-12.5 of the Board’s Rules of Practice and Procedure.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9X

ACTION OF THE BOARD – Request for Rehearing Granted.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application filed by the Department of Buildings (“DOB”) requesting a rehearing of the subject application to consider substantial new evidence not available at the time of the initial hearing pursuant to § 1-12.5 of the Board’s Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with a continued hearing on March 19, 2019, and then to decision on that date; and

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

WHEREAS, the site is located on the southwest corner of Zerega Avenue and Bruckner Boulevard, in an M1-1 zoning district, in the Bronx; and

WHEREAS, the site is occupied by a five-story commercial building with a rooftop sign structure containing a sign with a surface area of 672 square feet (the “Sign”); and

WHEREAS, on July 12, 2016, under the subject calendar number, the Board denied this appeal, which had returned to the Board pursuant to an Order of the Supreme Court of New York, New York County (the “Court”), filed in OTR Media Group, Inc. v. Board of Standards and Appeals of the City of New York (Index No. 101422/2013) on May 6, 2015, annulling the Board’s decision, dated September 16, 2014, and remanding the matter for a determination by the Board that a sign at the subject premises has (1) continuously existed at the premises since its establishment prior to November 1, 1979, and (2) has continuously been used for advertising purposes (the “2016 Resolution”); and

WHEREAS, this is the third time this application has been remanded to the Board; and

WHEREAS, the application was originally filed on February 12, 2013, challenging DOB’s revocation of two permits (Permit Nos. 210039224 and 201143253) based on DOB’s determination that the Sign had not been established as a legal non-conforming advertising sign; and

WHEREAS, by decision dated September 24, 2013, the Board denied the appeal, concluding that the Appellant had failed to meet its burden of demonstrating that the Sign was established prior to November 1, 1979, the relevant date for legal non-conforming status, pursuant to ZR § 42-55; and

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

WHEREAS, the Board subsequently held a public hearing and voted to add three additional recitals to the resolution dated September 24, 2013, distinguishing the

MINUTES

subject case from the facts of 2284 12th Avenue, but otherwise, maintained its decision to deny of the appeal; and

WHEREAS, on April 15, 2015, the Supreme Court annulled that revised determination and remanded the matter to the Board for determinations on whether the Sign was used continuously at the subject site since being legally established prior to November 1, 1979, and whether the Sign had continuously been used for advertising purposes; and

WHEREAS, in accordance with the Court's order, the Board held five public hearings on the second remand and, in the 2016 Resolution, concluded that, though the Sign had continuously existed at the premises since its establishment prior to November 1, 1979, it had not continuously been used for advertising purposes; and

WHEREAS, the 2016 Resolution was challenged pursuant to Article 78 of the New York Civil Practice Law and Rules, annulled and the matter was again remanded, pursuant to an Order of the Court, filed in OTR Media Group, Inc. v. Board of Standards and Appeals of the City of New York (Index No. 158646/2016) on March 16, 2018, to the Board for further consideration in light of the Board's decision in 2368 12th Avenue, Manhattan (Block 2005, Lot 32) (BSA Cal. No. 24-12-A) (the "2018 Remand"); and

WHEREAS, an application to reconsider the application pursuant to the 2018 Remand was filed with the Board on or around June 7, 2018; and

WHEREAS, the subject application was filed on or around June 8, 2018; and

WHEREAS, the 2018 Remand was restored to the Board's public hearing calendar and heard on the same dates as the subject application; and

WHEREAS, this application was decided at the Board's March 19 hearing, but public hearings continue with regards to the 2018 Remand, with the next public hearing scheduled for June 25, 2019; and

WHEREAS, pursuant to § 1-12.5 of the Board's Rules of Practice and Procedure:

The Board will not grant a request to rehear a case which was denied, dismissed, or withdrawn with prejudice unless: (1) substantial new evidence is submitted that was not available at the time of the initial hearing, (2) there is a material change in plans or circumstances, or (3) an application is filed under a different jurisdictional provision of the law; and

WHEREAS, in this application, DOB states that the agency recently obtained photographs of the site, certified by the New York State Department of Transportation ("NYSDOT"), that contradict the Board's determination, in the 2016 Resolution, that the Sign was established prior to November 1, 1979, and/or, in the alternative, provide further support for the Board's determination that the Sign was not continuously used for advertising purposes; and

WHEREAS, specifically, DOB submitted five (5) photographs from NYSDOT's photolog of Interstate 95 North (a/k/a Cross Bronx Expressway), the originals of which are made and maintained by NYSDOT in the normal

course of business, that include a view of the roof of the building located at the subject site: (1) Photograph 1, taken on June 28, 1978, showing neither a sign nor a sign structure on the subject roof; (2) Photograph 2, taken on June 18, 1981, showing neither a sign nor a sign structure on the subject roof; (3) Photograph 3, taken on May 7, 1985, showing neither a sign nor a sign structure on the subject roof; (4) Photograph 4, taken on October 22, 1990, in which a "Marlboro" sign on the subject roof is visible; and (5) Photograph 5, taken on May 16, 1995, in which a "Marlboro" sign on the subject roof is visible; and

WHEREAS, DOB states that, according to these photographs, the Sign did not exist at the subject site on June 28, 1978, or June 18, 1981, and, absent clear evidence of the Sign at the site between June 28, 1978, and November 1, 1979, it can be presumed to not have been established prior to November 1, 1979;

WHEREAS, DOB additionally asserts that the photographs additionally indicate that the Sign was not present at the site on at least two specific dates post-November 1, 1979 (June 18, 1981, and May 7, 1985) and, thus, present further uncertainty as to whether the Sign, even if satisfactorily established prior to November 1, 1979, was not discontinued for a period of two or more years; and

WHEREAS, accordingly, DOB submits that the application should be reheard by the Board to allow the introduction of this evidence and provide the Appellant an opportunity to rebut them; and

WHEREAS, the Appellant, represented by counsel, appeared in opposition to this application, alleging that (1) the materials submitted by DOB do not constitute "substantial new evidence . . . that was not available at the time of the initial hearing," as stated in § 1-12.5 of the Board's Rules of Practice and Procedure and supported by the New York State Court of Appeals' decision in Douglaston Civic Association v. Galvin, 36 N.Y.2d 1 (1974), which upheld the Board's denial of a request to rehear a variance application that had been granted and states, "[t]estimony which was as available before the hearing as it was at the time of the application is not newly discovered evidence," 36 N.Y.2d at 9; and (2) even if the materials qualify as such, they do not rebut evidence submitted by the Appellant regarding the Sign's legal establishment or continuous use; and

WHEREAS, the Appellant asserts that the NYSDOT photographs have been public records for decades and, with reasonable diligence, would have been available at the time of initial hearing; that the photograph dated June 28, 1978, two weeks after the execution of the outdoor advertising lease for the Sign on June 12, 1978, previously submitted into the public record for this appeal, is too early in time to be relevant to the question of whether the Sign was legally established prior to November 1, 1979; that the Supreme Court has already determined that the applicant met its burden in demonstrating legal establishment of the Sign; that the NYSDOT photographs are not records of a City agency or public utility, the highest form of acceptable

MINUTES

documentation in support of an existing use for legalization or proof of continual nonconforming use pursuant to DOB Technical Policy and Procedure Note (“TPPN”) 14/88, but should be considered, instead, “any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.,” listed third, on par with other evidence submitted into the record by the Appellant in this case to demonstrate continuous use, including a 1983 New York City Department of Finance (“DOF”) tax photos of 931 Zerega Avenue and 944 Havemeyer Avenue, which, the Appellant asserts, show the Sign on the roof of the subject building; and that the NYSDOT photographs dated June 18, 1981, and May 7, 1985, fail to show the discontinuance of the Sign for advertising for more than two years and, at most, indicated that the Sign was not present at the site on the dates on which the photos were taken; and

WHEREAS, the Appellant also argues that DOB is barred by the 2018 Remand to file this case as the 2018 Remand remanded the application to the Board for the sole purpose of distinguishing the subject application from the Board’s decision in 2368 12th Avenue; and

WHEREAS, in response, DOB submits that, in accordance with TPPN 14/88, DOB’s records, as the records of a City agency, are the best evidence of the existing use for legalization or for proving continual nonconforming use and those records, as previously submitted into the Board’s record on this appeal, demonstrate that DOB approved and issued permits for two accessory business roof signs (E.S. 120-86 and E.S. 121-86) and a rooftop structure (BN 805/86) in 1987 and did not issue an advertising sign permit to the site until 2008 (the revocation of such permit in 2013 served as the basis for Appellant’s original appeal application) and that, even if the Sign was established prior to November 1, 1979, it was discontinued when DOB issued permits for accessory business signs in 1987; and

WHEREAS, at hearing, the Appellant acknowledged that they were not previously in possession of the NYSDOT photographs and members of the Board stated that they had been previously unaware of NYSDOT as a source for evidence relating to signage adjacent to arterial highways; and

WHEREAS, the Board notes that DOB filed this application separately pursuant to § 1-12.5 of the Board’s Rules, which permits the filing of requests to rehear cases previously before the Board, and that the Board continues to hold public hearings on the 2018 Remand, as mandated by the Supreme Court; and

WHEREAS, in written submissions to the Board, DOB clarified that the agency was not previously in possession of the NYDOT photographs and provided the affirmation of DOB’s Executive Director of Special Enforcement, in which such DOB employee states that he first obtained the NYSDOT photographs in April 2017, subsequent to the 2016 Resolution, after first learning that NYSDOT maintains a photographic archive of New York State highways in a meeting in early spring 2007; DOB also

submitted a letter from NYSDOT explaining the procedure followed by NYSDOT’s Pavement Data Section, which, from 1975-2010, took photographs of interstate highways, state routes, federal routes and parkways at intervals of 1/100th of a mile (52.8 feet); and

WHEREAS, the NYSDOT letter also translates the numbers that appear at the bottom of each of the photographs clarifying the following details about each: (1) Photograph 1, taken on June 28, 1978: “004.63” is the distance in miles (4.63 miles) from either the county border or the beginning of I-95, the symbol before “004.63” represents an arrow for the northbound direction, “01” is the county code for Bronx County, and “78-646” identifies the image’s negative reel; (2) Photograph 2, taken on June 18, 1981: “1013” identifies the image’s negative reel, “061881” indicates the date of the photograph (June 18, 1981), the symbol before “004_61” indicates a northbound direction and “004_61” indicates the distance in miles (4.61 miles) from the county border or the beginning of I-95; (3) Photograph 3, taken on May 7, 1985: “5006” indicates the negative reel; “050785” indicates the date of the photograph (May 7, 1985), the symbol before “005_98” indicates a northbound direction and “005_98” indicates the distance in miles (5.98) from the county border or the beginning of I-95; (4) Photograph 4, taken on October 22, 1990: “0014” identifies the negative reel, “102290” indicates the date of the photograph (October 22, 1990), the symbol before “005_99” indicates a northbound direction and “005_99” indicates the distance in miles (5.99 miles) from the county border or beginning of I-95; and (5) Photograph 5, taken on May 16, 1995: “5008” identifies the negative reel, “051695” indicates the date of the photograph (May 16, 1995), the symbol before “004-55” indicates a northbound direction and “004-55” indicates the distance in miles (4.55 miles) from the county border or beginning of I-95; and

WHEREAS, the Board finds that the five NYSDOT photographs submitted by DOB constitute substantial new evidence that was not in DOB’s possession prior to the 2016 Resolution and finds that Appellant’s arguments in opposition to this application to be without merit; and

WHEREAS, specifically the Board finds that the facts underlying the Board’s denial of a request to rehear an application that preceded the Court of Appeals’ decision in Douglaston are distinguishable from the subject request in that the “substantial new evidence” submitted to the Board in that case—an eight-year old valuation filed in a New York State estate tax proceeding, and available in the public record for the prior three years, that valued the parcel that had been granted a variance by the Board at \$35,000—did not controvert the variance applicant’s submission to the Board, based on three comparable sites located within one-half mile of the premises, that its “Cost of Land” was \$121,878 (“This is not a case where the board’s decision was based on facts fraudulently misrepresented to it; the [variance application] presentation made it clear that the ‘Cost of Land’ figure represented its current value and not its actual cost.” Douglaston, 36 N.Y.2d at 9); and

MINUTES

WHEREAS, since first filing this appeal in February 2013 challenging DOB’s determination that the Sign is not entitled to legal non-conforming use status, the Appellant has submitted leases, affidavits, work completion notices, contracts, checks and DOF tax photos of other buildings in the area to prove that the Sign was established prior to November 1, 1979, and that it has not been discontinued since this time; and

WHEREAS, the NYSDOT photographs submitted herewith by DOB constitute the only clear photographs of the subject site prior to 2005 and refute evidence previously proffered into the record on this appeal, including, but not limited, to the affidavits from Richard J. Theyoung, President of Allied Outdoor Advertising, which stated that the Sign was constructed in early 1979 and continuously maintained thereafter, and Bruce Silverman, an advertising and media consultant, who stated that rooftop signage adjacent to or highly visible from major arteries in New York are so valuable that they are unlikely to be without advertising for an extended period of time—statements that are contradicted by Photograph 2, taken on June 18, 1981, and Photograph 3, taken on May 7, 1985, which indicate, on at least two dates post-November 1, 1979, neither the Sign nor a vacant sign structure on the roof of the premises.

Therefore, it is Resolved, that the Board of Standards and Appeals *grants* the subject request for a rehearing to consider substantial new evidence not available at the time of the initial hearing pursuant to § 1-12.5 of the Board’s Rules of Practice and Procedure.

Adopted by the Board of Standards and Appeals, March 19, 2019.

271-09-BZ

APPLICANT – Akerman LLP, for Syracuse Fund II LLC, owner; Jamaica Fitness Group, LLC, lessee.

SUBJECT – Application November 30, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building which is set to expire on January 17, 2019. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit, previously granted pursuant to ZR § 73-36, which expired on January 17, 2019; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the subject site is located on a triangular-shaped lot bound by Metropolitan Avenue to the north and Jamaica Avenue to the south, within an R6 (C2-3) zoning district, in Queens; and

WHEREAS, the site has approximately 565 feet of frontage on Metropolitan Avenue, 524 feet of frontage on Jamaica Avenue, 47,600 square feet of lot area, and is occupied by a three- (3) story commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) occupies 16,980 square feet of floor area within portions of the first floor (807 square feet of floor area), second floor (3,481 square feet of floor area) and third floor (12,692 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 2010, when, under the subject calendar number, the Board granted a special permit to legalize the operation of a PCE operated as Planet Fitness on the first, second and third floors of an existing three- (3) story commercial building on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on January 17, 2019; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all signage comply with C2 district regulations; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; this approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, at hearing, the Board questioned whether the subject PCE, “Planet Fitness,” continued to provide massages by New York State-licensed massage therapists and requested the requisite proof; and

WHEREAS, in response, the applicant represented that PCE no longer offers massage services; and

WHEREAS, by letter dated March 1, 2019, the Fire Department stated that the fire alarm and sprinkler systems have been inspected and tested satisfactory to Department standards; the subject PCE space has also been inspected by the Department’s Licensed Public Place of Assembly unit and the public assembly permit is current; and that the Fire

MINUTES

Department has no objection to the Board rendering a decision on this application; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term is appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated July 13, 2010, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on January 17, 2029, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received March 18, 2019’-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 17, 2029;

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 signage shall comply with C2 district regulations;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and an interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 271-09-BZ”) shall be obtained within one (1) year, by March 19, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 19, 2019.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

126-93-BZ

APPLICANT – Sohail Humayun, for Majid Eljamal, owner.

SUBJECT – Application February 2, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on January 18, 2015; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 1225 East 233rd Street, Block 4955, Lot 1, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group (“UG”) 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 26, 2019, at 10 A.M. for adjourned hearing, and then April 30, 2019, at 10 A.M., for continued hearing.

MINUTES

67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building’s determinations *a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA’s prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated September 26, 2016, acting on Department of Buildings (“DOB”) Application No. 122787779 reads in pertinent part:

Job Description:

INSTALL ADVERTISING SIGN. STRUCTURE PREVIOUSLY CONSTRUCTED UNDER APPLICATION 110179912 AND SIGN PREVIOUSLY INSTALLED UNDER APPLICATION 110301343.

The proposed construction of an A[D]VERT[I]SING SIGN IN A C1-9 DISTRICT IS CONTRARY TO SECTION 32-62 ZR; and

WHEREAS, this is an application, pursuant to ZR § 72-21, to permit, on a site located within a C1-9 zoning district, the maintenance of an advertising sign contrary to use regulations set forth in ZR § 32-62, on the basis of the applicant’s purported good-faith reliance on permits validly

issued by the Department of Buildings (“DOB”) and subsequently revoked; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice by publication in *The City Record*, with continued hearings on August 7, 2018, February 5, 2019, and March 19, 2019, and then to decision on that date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends denial of this application, stating that the applicant has failed to meet the findings for a variance; that the advertising sign, located at a major traffic intersection of the two principal access routes to the Queens Midtown Tunnel, is a distraction to drivers and pedestrians, creates unsafe traffic conditions and is detrimental to the public welfare; and that the sign is out of character with the surrounding residential community; and

WHEREAS, the subject tax lot is located on the west side of Second Avenue, between East 36th Street and the Queens Midtown Tunnel, in a C1-9 zoning district, in Manhattan; and

WHEREAS, the site has approximately 19 feet of frontage along Second Avenue, a depth of 85 feet and 1,573 square feet of lot area; and

WHEREAS, the subject lot is held in common ownership with lots 26, 27, 29, 30 and 32, all of which front on Second Avenue; lots 25, 24 and 21, all of which front on East 36th Street, and a portion of lot 34, which has frontage on both East 36th Street and East 37th Street; and

WHEREAS, the Board has previously exercised jurisdiction over the subject tax lot and several surrounding lots (lots 21, 24-30, 32 and 34)—described in the resolution as an irregularly shaped through and corner lot containing 58,637 square feet of lot area with approximately 368 feet of frontage on East 37th Street, 200 feet of frontage on East 36th Street and 200 feet of frontage on Second Avenue—on the subject block (Block 917) since May 6, 2002, when, under BSA Cal. No. 280-01-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the development of a mixed-use commercial and residential building contrary to zoning regulations regarding the location of commercial floor area, commercial rear yard equivalent, tower-on-a-base, street wall transparency, accessory parking and curb cuts set forth in ZR §§ 32-421, 33-283, 35-63(a), 23-652, 37-017, 13-134, 26-05 and 36-682, on condition that the occupancy of the second, third and fourth floors be limited to a post office; all trucks utilizing the ground floor loading docks exit the building through East 37th Street; 96 dwelling units be reserved for affordable housing in accordance with the 80/20 Program; street trees be maintained around the perimeter of the property; there be no parking in the layby lane on East 36th Street and such lane only be used for persons loading or unloading; the parking garage in the cellar and sub-cellar be limited to 214 accessory parking

MINUTES

spaces; the conditions appear on the certificate of occupancy; no permits, other than foundation permits, be issued for the construction of the post office space until the applicant has submitted an agreement for a post office tenant to the Board; the applicant obtain Board approval for any alternative use of the second, third and fourth floors should a post office not commit to the space; all lighting be directed away from adjacent residential units; the applicant work in conjunction with the New York City Department of Transportation to implement the traffic mitigation measures in the Environmental Assessment Statement unless the Department finds such measures to be unnecessary; that substantial construction be completed within four (4) years; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, Administrative Code and any other relevant laws under its jurisdiction (the “Variance Building”); and

WHEREAS, the resolution indicates that, at the time of the application, lots 26, 27 and 28 were improved with three vacant five-story multiple dwellings, which were proposed to be demolished to accommodate construction of the Variance Building; and

WHEREAS, on September 24, 2002, under BSA Cal. No. 280-01-BZ, the Board reopened the application and amended the resolution to permit the reconfiguration of the residential portion of the Variance Building on condition that the premises be maintained in compliance with the Board-approved plans; and

WHEREAS, on April 11, 2006, March 16, 2010, and July 15, 2014, under BSA Cal. No. 280-01-BZ, the Board granted four (4) year extensions of time to complete construction of the Variance Building and obtain a certificate of occupancy, which, the applicant reported, had been delayed due to the complex engineering demands of the site because of its adjacency to the Queens-Midtown Tunnel; and

WHEREAS, the latest extension of term grant expired on May 7, 2018, and another application for an extension of time to complete construction of the Variance Building was filed under BSA Cal. No. 280-01-BZ on June 6, 2018 (the “Extension Application”); and

WHEREAS, the Extension Application was heard on the same public hearing calendar as the subject application, but was withdrawn at the request of the applicant on February 5, 2019; and

WHEREAS, accordingly, the 2002 variance grant permitting the construction of the Variance Building has lapsed; and

WHEREAS, the subject advertising sign was also previously before the Board in an interpretative appeal, filed under BSA Cal. No. 86-11-A for lots 21 and 24-31 on the subject block (Block 917), of a Department of Buildings final determination to revoke the permits filed in connection with applications for a ground sign structure filed on lot 28 (DOB Application No. 110179912, the “Ground Structure Permit”) and a two-sided illuminated advertising sign (DOB Application No. 110301343, the “Double-Sided Sign

Permit”); and

WHEREAS, by resolution dated June 19, 2012, the Board denied the appeal, having found that the two-sided illuminated advertising sign installed at the site did not comply with ZR §§ 52-83 and 52-61 and that DOB had, thus, properly revoked the Ground Structure Permit and the Double-Sided Sign Permit (the “Permit Revocation Appeal”); and

WHEREAS, that determination was appealed, pursuant to Article 78 of the New York Civil Practice Law and Rules, and upheld by the New York State Supreme Court, New York County by order dated March 7, 2013; and

WHEREAS, the Supreme Court decision was reversed by the Appellate Division, First Department by order dated October 29, 2013, which ordered the Permits reinstated², but upon a granting a motion for re-argument, the Appellate Division recalled and vacated the October 2013 decision and substituted an order concluding that the Board erred in failing to consider the applicant’s alleged good-faith reliance on DOB’s issuance of the Ground Structure Permit and the Double-Sided Sign Permit in the Permit Revocation Appeal, remanded the application to the Board and directed the Board to determine whether, applying the factors of New York City Charter § 666(7), a variance was warranted³; and

WHEREAS, the Court of Appeals granted leave to appeal to both parties and, by order dated March 24, 2016, affirmed and modified the Appellate Division’s February 2014 decision and order, dismissed the petition and held that the proper procedure with which to resolve the issue of good-faith reliance was an application to the Board for a zoning variance⁴; and

WHEREAS, this application for a variance pursuant to ZR § 72-21 was filed on September 30, 2016; and

WHEREAS, an advertising sign measuring 14 feet high by 48 feet wide and located 35 feet above grade was erected on the north-facing wall (the “Original Sign”) of the multiple dwelling previously located on the subject lot (the “Multiple Dwelling”); and

WHEREAS, the Original Sign was “legalize[d]”—that is, conferred lawful status—by DOB on or around August 4, 1980, when DOB issued permits for the Original Sign under DOB Application No. ES 42/80 and the subject site was located within a C6-4 zoning district; and

WHEREAS, on December 1, 1983, the zoning map was amended to change the subject site to a C1-9 zoning district, where advertising signs are not permitted as-of-right, and the Original Sign was rendered non-conforming; and

WHEREAS, on April 2, 2008, six years after the Board-approved construction of the Variance Building, DOB issued a violation for failure to maintain the Multiple

1 Perlbinder Holdings, LLC v. Srinivasan, 2013 NY Slip Op 30466(U) (Sup Ct, New York County 2013).

2 Perlbinder, 110 A.D.3d 611 (1st Dept 2013).

3 Perlbinder, 114 A.D.3d 494 (1st Dept 2014).

4 Perlbinder, 27 N.Y.3d 1 (2016).

MINUTES

Dwelling; on April 3, 2008, DOB issued an emergency declaration; on April 4, 2008, DOB Application No. 110135620 was filed for demolition of the Multiple Dwelling and a demolition permit was issued the same day; and

WHEREAS, the applicant asserts that the Original Sign, originally affixed to the northern wall of the Multiple Dwelling, was removed upon demolition of the Multiple Dwelling and the applicant's representative filed and professionally certified DOB Application No. 110179912 to "INSTALL STRUCTURE FOR [A] GROUND SIGN" on lot 28 on June 3, 2008; and

WHEREAS, DOB issued the Ground Structure Permit on June 20, 2008; and

WHEREAS, on July 8, 2008, the demolition permit issued under DOB Application No. 110135620 for the Multiple Dwelling on lot 28 was signed off by DOB; and

WHEREAS, DOB Application No. 110301343 was filed for lot 28 on July 24, 2008, with the following Job Description:

INSTALL ILLUMINATED 14' X 48'
CHANGEABLE COPY ADVERTISING SIGN
ON STRUCTURE FILED UNDER SEPARATE
APPLICATION. THIS SIGN IS A DIRECT
REPLACEMENT FOR SIGN FILED UNDER
#ES 42/80; and

WHEREAS, the plans filed in association with the application illustrated a two-faced illuminated advertising sign on a sign structure affixed to the ground on lot 28, approximately 50 feet north of the northwestern corner of Second Avenue and East 36th Street; and

WHEREAS, on August 13, 2008, DOB issued objections to the application relating to differences between the sign proposed in the application and the Original Sign, installed under DOB Application No. ES 42/80, and the following supplemental objections were issued on October 15, 2008:

13. The new proposed sign must have the same area of signage as the original approved sign which is 672 sq. ft. and not to have 2 signs back to back as proposed under this application.
14. Also the new sign must be located in the same position as the original sign that was approved back in [the] 1980's, in order for this sign to be grandfathered.
15. The structural sign application should not have been filed as a Prof Cert until Sign application was filed and approved.
16. Also note that the height of original sign is 35'-0" from grade to under side of the sign. The proposed show 14'-0" only.
17. The above items must be met in order to be grandfathered otherwise the new sign must comply with C1-9 Zoning District, since this was down zone[d] from C6-4 Zoning District; and

WHEREAS, an application requesting review and reconsideration of objections 13, 14 and 16 was filed with DOB on behalf of the applicant, noting that "the [proposed] sign is substantially in the same location as originally but much lower in height and therefor[e] making a lesser impact on the community"; and

WHEREAS, the application included reference to and a copy of a plan sheet approved by the Board, limited solely to the relief granted under the 2002 variance—that is, waivers of zoning regulations regarding the location of commercial floor area, commercial rear yard equivalent, tower-on-a-base, street wall transparency, accessory parking and curb cuts—on December 17, 2003, indicating the relocation of a 54'-6" high by 14-foot-wide advertising sign to the side of the Variance Building at the southwest corner of Second Avenue and East 37th Street (the "Variance Building Sign"); and

WHEREAS, on October 28, 2008, then-DOB Manhattan Borough Commissioner Christopher Santulli ("BC Santulli") granted the reconsideration, stating "Ok to accept prior sign as grandfathering of existing non-conforming sign. Ok to accept lower sign as no increase in degree of non-compliance", and the Double-Sided Sign Permit was issued on December 11, 2008; and

WHEREAS, despite including references to DOB Application No. 110301343, the application for a new illuminated sign filed against lot 28, DOB's August and October 2008 objections, the application for reconsideration and the reconsideration approval (provided at the bottom of the reconsideration application form), also confusingly indicate the lot to which they apply as "lot 25," a parcel that fronts on East 36th Street, not Second Avenue, and located approximately 82 feet west of the northwestern corner of East 36th Street and Second Avenue; and

WHEREAS, the applicant states that practical difficulties and unnecessary hardship, in satisfaction of ZR § 72-21(a) have resulted from their reliance, in good faith, on DOB's issuance of the Ground Structure Permit and the Double-Sided Sign Permit; and

WHEREAS, the applicant avers that, as a result of their good-faith reliance on the approved reconsideration of the Manhattan Borough Commissioner, the highest level DOB official in the Manhattan borough office, and DOB's issuance of the Ground Structure Permit and the Double-Sided Sign Permit, a sign structure and illuminated two-sided advertising sign were constructed at the site "in the approved location" prior to the end of 2008 at a cost of more than \$176,000 (the "Existing Sign"); the applicant also states that they have since spent more than \$288,000 to maintain the sign, which "has remained at that approved location with the same size, configuration and elevation"; and

WHEREAS, the Existing Sign is, in fact, located, at the corner of Second Avenue and East 36th Street, across lots 26 and 27—not on lot 28, where the Original Sign was located and as was indicated on the DOB applications for the Ground Structure Permit and the Double-Sided Sign

MINUTES

Permit as well as the permits themselves, which refer to 669 Second Avenue as the address to which they apply, and not on lot 25, to which DOB's August and October 2008 objections and the reconsideration confusingly refer; and

WHEREAS, by letter dated April 30, 2010, DOB informed the owner and DOB applicant of record associated with the Ground Structure Permit of DOB's intention to revoke the approval and permit unless sufficient information was presented to address an attached Notice of Audit Objections⁵ noting objections to the size of the double-sided sign, its status as an advertising sign and its height above curb, none of which complied with C1-9 zoning district regulations, that the location of the sign was contrary to the reconsideration, which referred to lot 25, and that, pursuant to ZR § 52-83, "Non-conforming signs cannot be reconstructed or replaced in different locations than originally permitted by DOB in ES 42-1980 and subsequently modified by BSA" on December 17, 2003; and

WHEREAS, on August 25, 2010, DOB issued an Intent to Revoke Approvals and Permits for the Double-Sided Sign Permit, citing existing C1-9 zoning district regulations with which the Existing Sign did not comply; and

WHEREAS, the Ground Structure Permit was revoked on July 26, 2010, the Double-Sided Sign Permit was revoked on May 5, 2011, and on June 9, 2011, DOB issued its final determination that, because the sign had not been constructed within two years of the date of demolition in the same location and position as required by ZR § 52-836, the non-conforming advertising use was determined to have been discontinued; and

WHEREAS, that final determination, challenged before the Board in the Permit Revocation Appeal, read in pertinent part:

The zoning lot in question is subject to Board of Standards and Appeals (BSA) calendar number 280-01-BZ granted on 5/7/2002. By letter dated 12/17/2003, the then Chairman of the BSA determined that the installation of a sign 54'-6" high by 14' wide relocated to the corner of 2nd Avenue and East 37th Street, was found to be substantially in compliance with the above referenced BSA grant.

However, the location and size as approved per job number 110179912 does not conform to the

BSA letter and the BSA-approved plans attached thereto. The BC-1 Reconsideration Form signed by former Borough Commissioner Santulli, PE, on 10/28/2008 is unclear in that the applicant did not specify on the form that the sign would be relocated from the corner of 2nd Avenue and East 37th Street to the corner of 2nd Avenue and East 36th Street. Nonetheless, to the extent that such BC-1 form purports to authorize the relocation of the sign contrary to the size and location approved by BSA, such determination was issued in error and is hereby rescinded because the Department of Buildings does not have the legal authority to modify the terms of the BSA grant; and

WHEREAS, the applicant states that that determination failed to consider that the Original Sign was removed from the north wall of the Multiple Dwelling upon DOB's issuance of an emergency declaration that required the building's demolition; that BC Santulli approved the reconsideration application after having been apprised of all of the relevant facts and specifically found that the change in location and elevation of the sign, as proposed, would not increase the degree of non-compliance; and that the applicant has spent a considerable amount of money to construct and maintain the Existing Sign since 2008; and

WHEREAS, the applicant adds that due to DOB's history of approving, and later revoking, the Ground Structure Permit and Double-Sided Sign Permit, the applicant is no longer able to replace the Original Sign in compliance with ZR §§ 52-83 and 52-617 by reconstructing it in the same location and position within two years of the date of its demolition and that such a result imposes a significant financial hardship; and

WHEREAS, New York State courts have recognized that property owners may invoke the principle of good-faith reliance in the context of a variance application where they have made expenditures towards construction performed pursuant to, for instance, a building permit that is later revoked due to an invalidity that existed at the time the permit was issued, and such reliance resulted in a unique hardship, thereby serving as a substitute for the uniqueness finding set forth in ZR § 72-21(a); and

WHEREAS, in Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures made by a property owner in reliance on permits deemed to be invalid were suitably considered in an application for a variance, particularly with regards to the (a) finding, in which an applicant must allege "unnecessary hardship," because (1) the property owner acted in good faith and (2) there was no reasonable basis upon which the property owner could have been charged with constructive

⁵ This Notice of Audit Objections consistently refers to both DOB Application No. 110179912 for the ground structure and lot 28, the lot against which that application was filed.

⁶ Section 52-83 (Non-Conforming Advertising Signs) of the Zoning Resolution permits non-conforming advertising sign, except flashing signs, to be structurally altered, reconstructed or replaced "in the same location and position," provided that such structural alteration, reconstruction or replacement does not result in, *inter alia*, an increase in the degree of non-conformity of the sign or an increase in the sign's degree of illumination.

⁷ Pursuant to ZR § 52-61, discontinuity of a non-conforming use for a continuous period of two years terminates the right to continue the non-conforming use and such land or building must thereafter be used only for a conforming use.

MINUTES

notice of the permit's invalidity; and

WHEREAS, in Pantelidis v. Board of Standards & Appeals, 10 N.Y.3d 846 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate for the New York State Supreme Court to have conducted a good-faith reliance hearing, rather than remand the case to the Board, to determine whether the property owner could claim reliance in the context of an Article 78 proceeding to overturn the Board's denial of a variance application; the Court established that the Board should conduct such a hearing and that good-faith reliance is relevant to the variance analysis; and

WHEREAS, in Woods v. Srinivasan, 108 A.D.3d 412 (1st Dept 2013), lv to appeal denied, 22 N.Y.3d 859 (2014), the Appellate Division held that, where the issue was whether construction documents and plans complied with applicable side lot line requirements, DOB, rather than the property owner, was in the best position to avoid the erroneous issuance of the permit, accordingly, the court found that the owner had relied in good faith on DOB's permits, which were issued after DOB plan examination, and remanded the matter to the Board to consider whether petitioner met the remaining elements required for the granting of a variance; and

WHEREAS, the Board notes that the body of case law addressing good-faith reliance and a property owner's ability to utilize detrimental reliance in support of the finding required pursuant to ZR § 72-21(a) is limited to those instances where there is a unique history of approvals from (1) high-level municipal officials (i.e., the Village Board of Trustees, as in Jayne Estates, and a DOB Borough Commissioner, as in Pantelidis) (2) on the precise matter at issue; and

WHEREAS, accordingly, the Board identifies key questions in the good-faith reliance inquiry under the common law to include: (1) were the approvals obtained and later revoked based on a circumstance that existed when the approval were first granted; (2) did the approval process include an inquiry into the matter that would subsequently be the basis for the reversal of the approval; (3) could the owner have anticipated the reversal in light of municipal assurances to the contrary; and (4) was construction performed and expenditures made subsequent to the issuance of the approvals; and

WHEREAS, in its submission to the Board on this application, dated May 7, 2018, DOB states that the applicant fails to support the argument that their reliance on DOB's issuance of the Ground Structure Permit and Double-Sided Sign Permit was reasonable and in good faith; specifically, DOB notes that the Board granted a variance to a site that included the subject lot, thereby bringing the lot into the Board's jurisdiction, in 2002, six years prior to the demolition of the Multiple Dwelling and removal of the Original Sign; that the applicant never returned to the Board to obtain approval for the locating of the Existing Sign in its present location across lots 26 and 27, despite having previously obtained Board approval, on December 17, 2003,

to relocate an 54'-6" wide by 14 foot high advertising sign to the side of the Variance Building; that the applicant, instead, sought approval to construct a ground structure and an illuminated two-faced sign on lot 28 from DOB; that the "Job Description" in the Double-Sided Sign Permit application stated that the proposed sign was a "direct replacement for [the] sign filed under #ES 42/80"—a single-faced illuminated sign located 35 feet above grade on the wall of a building—and yet that application was accompanied by plans that, contradictorily, show an illuminated double-faced sign on a ground structure; and that the reconsideration application failed to disclose facts relevant to BC Santulli's consideration, to wit, the "Nature of Request" section of the form states, "the sign is substantially in the same location as originally but much lower," but does not include the material fact that the sign was proposed to be relocated from the corner of Second Avenue and East 37th Street, as approved by the Board on December 17, 2003, to Second Avenue and East 36th Street; and

WHEREAS, in contrast to Jayne Estates, where the Court considered the inability of the property owner to have constructive notice that the approvals they received were contrary to zoning, DOB states that the record in the subject case demonstrates that the applicant was aware of the discrepancies between applicable zoning regulations, the materials submitted to DOB and BC Santulli's approval, thus, any monies spent in reliance on the approved reconsideration and DOB's subsequent issuance of the permits was unreasonable and cannot serve as the basis of a variance on the basis of good-faith reliance; and

WHEREAS, in the course of public hearings, the Board requested additional information from the applicant to explain the locating of the Existing Sign across lots 26 and 27, despite express references in the permit applications and on the permits themselves to lot 28 and 669 Second Avenue⁸; the Board also requested clarification and identification of the materials submitted with the reconsideration application to clarify the basis of BC Santulli's approval as well as materials to support the applicant's representation that the Existing Sign is located as approved, that is, that BC Santulli's approval permitted construction of the "grandfathered" Existing Sign on lots 26 and 27, despite the Original Sign having been located on lot 28; and

WHEREAS, in response, the applicant states that at the time of filing the application for a new advertising sign, the DOB computer system would not permit the addition of lots 26 and 27 to the permits for a sign, hence the applications for the Ground Structure Permit and Double-Sided Sign Permit indicate lot 28 rather than lots 26 and 27 and, further, that the Ground Structure Permit application was

⁸ According to DOB's Buildings Information System ("BIS"), lot 28 alone is assigned an address of 669 Second Avenue; lot 26 is assigned both 663 Second Avenue and 247 East 36th Street and lot 27 is assigned 665 Second Avenue.

MINUTES

accompanied by a plan sheet, titled “Site Plan and Sign Location,” showing the sign installed across lots 26 and 27 and indicating that the “former location” of the Original Sign was lot 27, thus, the Existing Sign’s location is, in fact, as approved by DOB; and

WHEREAS, in addition, the applicant submitted an affidavit from the engineer of record for the Double-Sided Sign Permit, swearing that he attended a meeting with BC Santulli to discuss the reconsideration application on October 29, 2008, at which meeting BC Santulli was presented with plan sheets showing a double-sided advertising sign on a structure filed under “[DOB Application No.] 110179912”; the lights on the lower walkway of the structure; a section through the sign and the sign structure, again referencing the Ground Structure Permit application number; a plot plan showing a sign proposed to be located 50 feet north of the northwest corner of East 36th Street and Second Avenue; a site plan showing the existing conditions of the block and indicating an existing advertising sign located on the north exterior wall of a structure fronting Second Avenue; a plan sheet showing the elevation of the Variance Building approved by the Board; and a plan sheet indicating Board approval of the relocation of a sign to the exterior wall of the Variance Building at the southwest corner of Second Avenue and East 37th Street; and

WHEREAS, these materials appear to be the same as those filed with the Double-Sided Sign Permit application, already in the record for this application; and

WHEREAS, the affiant also provided oral testimony before the Board at its hearing, on March 19, 2018, explaining that the DOB filings for the Ground Structure Permit and Double-Sided Sign Permit made reference to several different lots on the subject block because the site was a single zoning lot and the exact location of the proposed sign on the zoning lot was irrelevant as long as there was, as stated in his approval, “no increase in [the] degree of non-compliance”; and that BC Santulli knew that the Original Sign was formally on the exterior of the Multiple Dwelling on lot 28, that the Board approved the relocation of the sign to the side of the Variance Building in 2003, that the Multiple Dwelling was being demolished and a sign was being installed at a lower height, but the affiant did not recall whether BC Santulli inquired about the proposed sign being double-sided or illuminated on two sides and whether or not such elements increased the proposed sign’s degree of non-compliance, as compared to the Original Sign, which had a single illuminated face, with applicable use regulations, contrary to ZR § 52-83; and

WHEREAS, the materials submitted to DOB in connection with the Ground Structure Permit and the Double-Sided Sign Permit are inconsistent with regards to the proposed location of the Existing Sign, including the application for the Ground Structure Permit, which was professionally certified, not subject to DOB plan exam review and filed against lot 28; the structural drawings submitted with the Ground Structure Permit application,

which were also professionally certified and, despite the application’s reference to lot 28, show a double-sided sign located across lots 26 and 27; materials submitted with the application for the Double-Sided Sign Permit and approved by DOB, which reference the sign structure filed under separate application and includes a plot plan indicating that the sign was to be located at an angle on a lot approximately 50 feet north of the intersection of East 36th Street and Second Avenue, a location that most closely identifies lot 28, located on Second Avenue approximately 49.4 feet north of its intersection with East 36th Street, not lot 26, which is located at the intersection, nor lot 27, which is located between lots 26 and 28; or the reconsideration application and supportive materials, submitted by the applicant’s representative, which curiously references lot 25, a lot with no frontage on Second Avenue, and was accompanied by the same materials submitted with the Double-Sided Sign Permit, including a Board-approved plan sheet showing an advertising sign relocated to the corner of Second Avenue and East 37th Street, a lot currently identified on the New York City Tax Map as lot 34; and

WHEREAS, additionally, while the applicant has made reference to a “Site Plan & Sign Location” plan sheet as proof that DOB considered and approved the locating of the Existing Sign on lots 26 and 27, the plan sheet is devoid of any indications that it was approved by DOB or submitted with any DOB application; this is in contrast to other plans submitted into the record by the applicant, including plans described as having accompanied the Double-Sided Sign Permit as well as the reconsideration application, which are stamped “Approved,” carry a bar code referencing the application number and have a perforated DOB approval, and structural drawings submitted with the Ground Structure Permit, which carry a bar code referencing the application number, have a perforated DOB approval and carry a DOB “Professional Certification” stamp; and

WHEREAS, such inconsistencies, the result of the way the applicant elected to submit materials to DOB, undermine both the notion that that the applicant could not have anticipated revocation of the permits and that DOB was in the best position to avoid their erroneous issuance, and, therefore, distinguish the subject case from Jayne Estates, where the owner incurred construction costs in reliance on a stipulation entered into with village trustees that was later invalidated due to the trustees’ lack of authority to enter into the stipulation, a condition that not even the village attorneys seemed to have been aware of at the time of the settlement; and Woods, where the property owner specifically requested that the plans be reviewed by a DOB plan examiner, rather than be professionally certified, DOB approved the plans, issued permits and subsequently revoked them based on a change in the agency’s interpretation of a zoning provision; and

WHEREAS, accordingly, the Board finds that the Ground Structure Permit and the Double-Sided Sign permit were both granted and later revoked based on circumstances—namely, the locating of the then-proposed

MINUTES

sign in a different location and position than the Original Sign and the failure to comply with the plans approved by the Board in connection with the Variance Building—that existed at the time of their original approval, as evidenced by the materials submitted with the Double-Sided Sign permit and later provided in support of the reconsideration application, which show an existing sign on the side of the Multiple Dwelling that formerly occupied lot 28, a proposal to relocate the sign on a ground structure on lot 28 and Board approval of a sign relocated to the wall of the Variance Building facing the southwest corner of East 37th Street and Second Avenue, as well as the structural drawings filed with the Ground Structure Permit, which, in contrast, show a double-sided sign traversing lots 26 and 27, the Existing Sign’s present location; and

WHEREAS, the Board finds that while an inquiry was made with BC Santulli in October 2008 regarding the surface area of the proposed signage and the proposal to install back-to-back advertising signs on a ground structure, the materials in the record fail to indicate that BC Santulli was informed of the circumstance that would ultimately serve as the basis for DOB’s revocation of the Ground Structure Permit and Double-Sided Sign Permit, to wit, that the proposed sign would be relocated, not only from lot 28, the location of the Original Sign, but also from the corner of Second Avenue and East 37th Street, as indicated on the Board-approved plan sheet, and appear, instead, across lots 26 and 27 at the corner of Second Avenue and East 37th Street; and

WHEREAS, the Board finds that the applicant has also failed to demonstrate that they should not have anticipated revocation of the Ground Structure Permit and the Double-Sided Sign Permit—the applicant was, in fact, in the best position to know about the inconsistencies contained in their DOB filing regarding the actual location of the Existing Sign and could have anticipated DOB’s letter dated April 30, 2010, informing the owner of DOB’s intent to revoke the Ground Structure Permit on account of its location; and

WHEREAS, in addition, as the Board stated in its determination in the Permit Revocation Appeal, “it is clear that a sign which was relocated to a different tax lot at least 27 feet away from its original setting cannot be considered to be in the ‘same location and position’ as the previously non-conforming sign, as required by ZR § 52-83”; and

WHEREAS, though the applicant undoubtedly constructed the Existing Sign and expended money to maintain the same subsequent to the issuance of the Ground Structure Permit and Double-Sided Sign Permit and prior to their revocation, as noted above, the Board is not persuaded that the applicant has established the requisite elements of good-faith reliance; and

WHEREAS, accordingly, the Board has determined that the applicant could not have relied in good faith on the reconsideration approval of BC Santulli; and

WHEREAS, because the applicant failed to establish good-faith reliance in satisfaction of ZR § 72-21, a threshold finding in the subject variance application, the Board did not

analyze the remainder of the variance findings; and

Therefore, it is Resolved, that decision on behalf of the Manhattan Borough Commissioner, dated September 26, 2016, acting on Department of Buildings (“DOB”) Application No. 122787779, is sustained and the subject application is hereby *denied*.

Adopted by the Board of Standards and Appeals, March 19, 2019.

2017-247-BZ

CEQR #17-BSA-023K

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 26, 2017, acting on DOB Application No. 321497126, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required; and

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

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, with continued hearings on August 21, 2018, December 4, 2018, February 5, 2019, and March 19, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of

MINUTES

the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue M and Avenue N, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage on East 24th Street, 100 feet of depth, 4,000 square feet of lot area, and is occupied by a two- (2) story plus cellar and attic single-family dwelling containing 2,792 square feet of floor area (0.70 FAR), an open space ratio of 0.97 (2,703 square feet of open space), a front yard with a depth of 15'-11", a rear yard with a depth of 27'-1.5", two (2) side yards with widths of four (4) feet and 8'-10", and a detached one- (1) story stucco frame garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such

enlargement shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;

- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by vertically extending the dwelling in the front yard and rear yard and horizontally extending the dwelling into the front yard, resulting in a two- (2) story plus attic and cellar dwelling with 4,000 square feet of floor area (1.0 FAR), an open space ratio of 0.58 (2,309 square feet of open space), a front yard with a depth of 15'-11", a rear yard with a depth of 20 feet at the first story with an additional five (5) foot setback at the second story and attic level, and two (2) side yards with widths of five (5) feet and eight (8) feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,297 square feet to 1,675 square feet, the second floor from 926 square feet to 1,511 square feet, and the attic from 569 square feet to 815 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 (2,000 square feet of floor area) is permitted, a minimum open

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

space ratio of 1.5 is required (based on district regulations permitting an as-of-right proposal containing 2,000 square feet of floor, a minimum of 3,000 square feet of open space would be required) and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141 and 23-47; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the “Study Area”) concluding that, of the 92 qualifying residences for which calculations were provided, 65 residences (95 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.25, and ten (10) residences (11 percent) have an FAR of 1.0 or greater; and

WHEREAS, the applicant also provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 30 other single- or two- (2) family dwellings located thereon, 26 lots (87 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 0 feet to 29’-10”, including the dwelling located to the rear of the subject site, which has a rear yard with a depth of 21 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-023K dated August 22, 2017; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “February 28, 2019”-Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

building: a maximum floor area ratio of 1.0 (4,000 square feet of floor area), a minimum open space ratio of 0.58 (2,309 square feet of open space) and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet above the first floor as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-247-BZ”) shall be obtained within four (4) years, by March 19, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, March 19, 2019.

2018-20-BZ

CEQR #18-BSA-097K

APPLICANT – Jay Goldstein, Esq., for Jeffrey Ackerman, owner.

SUBJECT – Application February 9, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area and open space) and ZR §23-461(1) (required side yard). R2 zoning district.

PREMISES AFFECTED – 2801 Avenue M, Block 7646, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta3

Negative: Chair Perlmutter and Commissioner Scibetta2

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 25, 2018, acting on Department of Buildings (“DOB”) Application No. 321191189, reads in pertinent part:

1. ZR 23-141 The proposed plans are contrary to the Zoning Resolution 23-141 in that the proposed floor area ratio (“FAR”) exceeds the

MINUTES

- permitted 50%;
2. ZR 23-141 The proposed plans are contrary to the Zoning Resolution 23-141 in that the open space ratio (“OSR”) is less than the required 150%;
 3. ZR 23-461(a) Plans are contrary to the Zoning Resolution 23-461(a) in that the proposed side yard is less than the required side yard 5’-0”;
- and

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

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, with continued hearings on October 11, 2018, January 15, 2019, and March 19, 2019, and then to decision on that date; and

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

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

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the northeast corner of Avenue M and East 28th Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 32.5 feet of frontage along Avenue M, 100 feet of frontage along East 28th Street, 3,250 square feet of lot area, and is occupied by a two (2) story plus cellar single-family dwelling containing 2,120 square feet of floor area (0.65 FAR), an open space ratio of 1.0 (2,111 square feet of open space), a front yard on Avenue M with a depth of ten (10) feet, a front yard on East 28th Street with a depth of 10’-1”, two (2) side yards with widths of 2’-10” and 31’ and a one- (1) story detached garage; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-

BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building’s non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to both vertically and horizontally enlarge the building into the side yard along East 28th Street, resulting in a two- (2) story plus attic and cellar dwelling with 3,043 square feet of floor area (0.94 FAR), an open space ratio of 0.64 (1,948 square feet of open space), a front yard on Avenue M with a depth of ten (10) feet, a front yard on East 28th Street with a depth of 15 feet, two (2) side yards with widths of 2'-10" and 20' and a one- (1) story detached garage; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,139 square feet to 1,302 square feet, the second floor from 981 square feet to 1,145 square feet, and create an attic with 596 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (1,625 square feet of floor area), a minimum open space ratio of 1.5 is required (2,438 square feet of open space based on a complying floor area) and two (2) side yards, one (1) with a minimum of five (5) feet in width and one (1) with a minimum of 20 feet in width are required pursuant to ZR §§ 23-141 and 23-461(a); and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying 2'-10" eastern side yard and maintains the non-complying ten (10) foot front yard on Avenue M, and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying eastern side yard and front yard predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 98 qualifying residences, 84 residences (86 percent) have an FAR of greater than 0.5, ranging from 0.53 to 1.14, and 11 dwellings (11 percent) have an FAR greater than 0.94; and

WHEREAS, with regards to open space, the applicant proposes to decrease the non-complying existing OSR, from 1.0 to 0.64, and increase the lot coverage, from 35 percent to 40 percent; the applicant provided a lot coverage study concluding that, 27 lots (28 percent) have a lot coverage of 40 percent or greater, ranging from 40 percent to 62 percent; and

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

located, nor impair the future use or development of the surrounding area; and

WHEREAS, two Board Commissioners expressed concerns about the massing of the proposed attic and immediate visibility of the enlarged building from the immediately surrounding area and, accordingly, voted to deny this application on the basis that the proposal would, in fact, alter the essential character of the neighborhood; and

WHEREAS, nevertheless, a majority of the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA097K, dated February 8, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one- (1) family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio and side yards, contrary to ZR §§ 23-141 and 23-461(a); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "March 1, 2019"-Seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.94 (3,043 square feet of floor area), a minimum open space ratio of 0.64 (1,948 square feet of open space), a front yard along Avenue M with a minimum depth of ten (10) feet, and two (2) side yards with minimum widths of 20 feet and 2'-10" as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-20-BZ") shall be obtained within four (4) years, by March 19, 2023;

THAT this approval is limited to the relief granted by

MINUTES

the Board in response to specifically cited DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, March 19, 2019.

2018-138-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for 257 Associates Borrower LLC, owner; BBP Fitness LLC, lessee. SUBJECT – Application August 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Brick New York in a portion of the cellar and first floor of an existing building) contrary to ZR 32-10. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, Block 767, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, March 19, 2019.

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for adjourned hearing.

2016-4217-BZ

APPLICANT – Eric Palatnik, P.C., for Bartow Holdings, LLC, owner.

SUBJECT – Application June 13, 2016 – Re-Instatement (§11-411) of a variance which permitted the operation of an Automotive Service Station with accessory uses (UG 16B), which expired on September 29, 2008; Amendment (§11-

412) to permit structural alterations to the building; Amendment to permit Automotive Laundry; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 1665 Bartow Avenue, Block 4787, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

2016-4469-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Winston Network, Inc., owner.

SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2018-21-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saeed Azarfar, owner.

SUBJECT – Application February 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area, open space and lot coverage) and ZR §23-461(a) (required side yard). R3-2 zoning district.

PREMISES AFFECTED – 1773 East 22nd Street, Block 6805, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 19, 2019
1:00 P.M.**

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

ZONING CALENDAR

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.

SUBJECT – Application August 17, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Block 4938, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2017-273-BZ

APPLICANT – Law Office of Lyra J. Altman, for Carol Greenberger & Sidney Greenberger, owners.

SUBJECT – Application September 27, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 975 East 24th Street, Block 7588, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.

SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2018-143-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; Fithouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2018-194-BZ

APPLICANT – Law Office of Lyra J. Altman, for IRS LLC by Isaac Stern, owner.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) to permit the conversion and enlargement of a two-family home to a single-family home contrary to ZR §23-141 (Floor Area Ratio and Open Space). R2 zoning district.

PREMISES AFFECTED – 2317 Avenue K aka 1086 East 24th Street, Block 7605, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**SPECIAL HEARING
WEDNESDAY MORNING, MARCH 20, 2019
10:00 A.M.**

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

ZONING CALENDAR

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-
21) to permit an addition to an existing museum and library
buildings (The Frick Collection) contrary to ZR §24-591
(height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382
(rear yard equivalent) and ZR §§23-661 and 23-662 (street
wall location and setback). R10 (Special Park Improvement
District), R8B (Limited Height District 1-A) Upper East
Side Historic District and an individual New York City
Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385,
Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to June 4,
2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 5, 2019

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-----------------------------------|-----|
| DOCKET | 258 |
| CALENDAR of April 23, 2019 | |
| Morning | 259 |
| Afternoon | 260 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, March 26, 2019**

Morning Calendar261

Affecting Calendar Numbers:

| | |
|--------------------------|--|
| 103-79-BZ | 25-30 44 th Street, Queens |
| 813-87-BZ | 110 Boerum Place, Brooklyn |
| 189-08-BZ | 232 Mercer Street, Manhattan |
| 161-11-A | 82-20 Britton Avenue, Queens |
| 150-14-BZ | 30 Broad Street, Manhattan |
| 429-29-BZ | 4801 Kings Highway, Brooklyn |
| 867-55-BZ | 66-15 Borden Avenue, Queens |
| 156-73-BZ | 1975 Eastchester Road, Bronx |
| 223-00-BZ | 272 West 10 th Street, Manhattan |
| 26-02-BZ | 1680 Richmond Avneue a/k/a 3101 Victory Boulevard, Staten Island |
| 245-03-BZ | 160-11 Willets Point Boulevard, Queens |
| 209-04-BZ | 109-09 15 th Avenue, Queens |
| 2017-316-A | 95 Androvette Street, Staten Island |
| 2017-202-A | 43 Cunard Avenue, Staten Island |
| 2017-144-A | 25-30 44 th Street, Queens |
| 2018-23-A & 2018-24-A | 29 and 31 Herbert Street, Staten Island |
| 2018-47-A | 45 Case Avenue, Staten Island |
| 2016-4127-BZ | 1547 East 26 th Street, Brooklyn |
| 2018-106-BZ | 124 Hastings Street, Brooklyn |
| 2016-1208-BZ | 300 East 64 th Street, Manhattan |
| 2016-4240-BZ | 1231 Third Avenue, Manhattan |
| 2016-4465-BZ | 129 Anderson Street, Staten Island |
| 2017-246-BZ | 61/63 Crosby Street, Manhattan |
| 2017-272-BZ | 10-19 46 th Road, Queens |
| 2017-288-BZ | 17-10 Whitestone Expressway, Queens |
| 2017-298-BZ | 14 White Street, Manhattan |
| 2018-33-BZ | 31-41 97 th Street, Queens |

Afternoon Calendar281

Affecting Calendar Numbers:

| | |
|-------------|---------------------------------------|
| 2018-108-BZ | 1 Wall Street, Manhattan |
| 2018-141-BZ | 110-37 68 th Drive, Queens |
| 2018-156-BZ | 80-97 Cypress Avenue, Queens |

DOCKETS

New Case Filed Up to March 26, 2019

2019-60-BZ

132-02 89th Avenue, Block 9361, Lot(s) 0020, Borough of **Queens, Community Board: 9**. Special Permit (§73-50) to legalize a 1,566-square foot portion of an existing manufacturing/warehouse building (Use Group 17) with accessory office space which encroaches into the required 15' side yard that is required of lots within M1-1 zoning districts that coincide with a side lot line of a zoning lot located within an R4 zoning district contrary ZR §43-301. M1-1 Zoning District. M1-1/R4 district.

2019-61-BZ

1370 East 24th Street, Block 7659, Lot(s) 0075, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-141 (FAR & open space ration); ZR 23-461(a) (side yards) and 23-47 (rear yard). R2 zoning district.7 R2 district.

2019-62-BZ

435 Hudson Street, Block 00602, Lot(s) 0068, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (S10) to be located within the cellar of an existing commercial building with a small lobby entrance on the first floor contrary to ZR §42-10. M1-5(MX-6) zoning district. M1-5(MX-6) district.

2019-63-BZ

120 West 72nd Street, Block 1143, Lot(s) 7505, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Orangetheory Fitness) located on a portion of the first-floor of an existing mixed- use commercial and residential building contrary to ZR §32-10. C4-6A zoning district (Upper West Side/Central Park West Historic District) C4-6A district.

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

CALENDAR

REGULAR MEETING
APRIL 23, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 23, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

222-90-BZ

APPLICANT – Kennedys CMK LLP by David M. Kupfer, for 80-02 Fee Owner LLC, owner; 24 Hour Fitness Holdings LLC, lessee.

SUBJECT – Application July 5, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on August 13, 2016; Amendment to permit reflect a new operator, changes in hours of operation and minor alteration to the layout; Extension of Time to Obtain a Certificate of Occupancy which expired on March 7, 2009; Waiver of the Board’s Rules. C4-4 zoning district.

PREMISES AFFECTED – 80-02 Kew Gardens Road, Block 3348, Lot 37, Borough of Queens.

COMMUNITY BOARD #9Q

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application June 15, 2018 – Extension of Term of a previously approved Special Permit (73-36) which permitted the operation of a Physical Cultural Establishment (Bodhi Fitness Center) which expired on June 1, 2018; Amendment to permit the enlargement of the establishment by 4,037.41 square feet. C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

208-03-BZ

APPLICANT – Eric Palatnik, P.C., for Shell Road LLC, owner.

SUBJECT – Application October 19, 2018 – Extension of Term and Amendment of a previously approved Variance (§72-21) which permitted an enlargement of a one-story commercial building to a two-story commercial building, occupied as a catering hall (Use Group 9) which expires on October 19, 2019. M1-1 and C1-2/R4 Special Ocean Parkway Special District.

PREMISES AFFECTED – 2555 Shell Road, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

183-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1400 Retail Owner LLC, owner; TSI West 115th Street LLC dba New York Sports Club, lessee.

SUBJECT – Application January 29, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building which expired on November 1, 2018; Amendment to permit a change in the hours of operation; Waiver of the Board Rules. C4-5X zoning district.

PREMISES AFFECTED – 1400 Fifth Avenue, Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEALS CALENDAR

2019-45-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application January 31, 2019 – Appeal of the DOB interpretation (dated 1/31/2019) that motor freight station for regulated medical waste use at the premises constitutes a UG 18 use pursuant to ZR § 42-15 and seeks the Board’s confirmation that such use constitutes a UG 16 use pursuant to ZR § 32-25.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

CALENDAR

**REGULAR MEETING
APRIL 23, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 23, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-265-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.
SUBJECT – Application September 8, 2017 – Reinstatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board’s rules. R6B zoning district.
PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd Avenue, Block 822, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #7BK

2018-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 102 Metro, LLC, owner; Sedona Fitness, lessee.
SUBJECT – Application March 6, 2018 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Sedona Fitness*) to be located on portions of the cellar, first floor and the entirety of the second floor of an existing building contrary ZR §32-10. C2-3/R3A zoning district.
PREMISES AFFECTED – 102-02 Metropolitan Avenue, Block 3900, Lot(s) 1 & 5, Borough of Queens.
COMMUNITY BOARD #6Q

2018-174-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for A & L 1440, LLC, owner; 305 Fitness Studio 3rd Avenue LLC, lessee.
SUBJECT – Application November 13, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*305 Fitness*) to occupy the cellar, first and second floors of an existing two-story building contrary to ZR §32-10. C1-9R8B zoning district.
PREMISES AFFECTED – 1440 3rd Avenue, Block 1510, Lot 38, Borough of Manhattan.
COMMUNITY BOARD #8M

2018-182-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Derp Associates, LLC, owner; Blink Braddock Avenue Inc., lessee.
SUBJECT – Application November 20, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Blink*) in an existing building contrary to ZR §32-10. C4-1 zoning district.
PREMISES AFFECTED – 220-05 Hillside Avenue, Block 7914, Lot 55, Borough of Queens.
COMMUNITY BOARD #13Q

2019-8-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Fordec Realty Corp., owner; Blink Jerome Avenue Inc., lessee.
SUBJECT – Application January 11, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) on a portion of the first and the entire second floor of an existing building contrary to ZR §32-10. C8-2 zoning district.
PREMISES AFFECTED – 3000 Jerome Avenue, Block 3321, Lot 9, Borough of Bronx.
COMMUNITY BOARD #7BX

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 26, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an amendment of a variance, previously granted pursuant to ZR § 72-21, to eliminate conditions of that approval and permit occupancy of a building, previously limited to two families, by three families; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with continued hearings on October 23, 2018, February 5, 2019, March 26, 2019, and then to decision on March 26, 2019; and

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

WHEREAS, the subject site is located on the west side of 44th Street, between 25th Avenue and 28th Avenue, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 44th Street, a depth of 100 feet, 2,500 square feet of lot area and is occupied by a semi-detached two-story plus basement three-family residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1979, when, under the subject

calendar number, the Board granted a variance to permit the construction of a two-story plus basement, two-family dwelling that encroached on the required side yard, contrary to ZR § 23-462, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; a deed restriction limiting the occupancy to a two-family dwelling be filed and submitted to the Building Department prior to the issuance of a building permit; the Certificate of Occupancy indicate the libre, page and date of recording of said covenant; and that all laws, rules and regulations applicable be complied with, and that substantial construction be completed within one year from the date of the resolution (the “1979 Variance”); and

WHEREAS, a Declaration dated July 5, 1979, was recorded against the subject tax lot with the Office of City Register, Queens County, at Reel 1180, Page 748, describing the dwelling to be constructed as two-stories and two-family, with the ground floor basement “used in conjunction with the first-floor apartment” (the “Deed Restriction”); and

WHEREAS, Certificate of Occupancy No. 195655 indicating a two-family dwelling at the premises and, in the area titled “Limitations or Restrictions,” that the property was restricted by the subject calendar number as well as the Deed Restriction, recorded at Reel 1180, Page 748, was issued on July 28, 1980 (the “1980 CO”); and

WHEREAS, on August 25, 2003, Certificate of Occupancy No. 401501264 was issued to the premises, indicating one-family residence at each of the basement, first and second floor levels, for a total of three-families, and, in the area titled “Limitations or Restrictions,” reported, “NONE” (the “2003 CO”); and

WHEREAS, by application filed on May 5, 2017, under BSA Cal. No. 2017-144-A, the New York City Department of Buildings (“DOB”) seeks revocation of the 2003 CO because it does not comply with the 1979 Variance (the “DOB Appeal”); and

WHEREAS, this application for an amendment of the 1979 variance was filed on March 28, 2018; and

WHEREAS, the two cases were, thereafter, heard together, but while the subject case was decided on March 26, 2019, the DOB Appeal remains at the Board pending the applicant’s satisfactory compliance with the conditions of this resolution, further explained below; and

WHEREAS, this application seeks an amendment to the conditions of the 1979 Variance—specifically, the removal of the limitation on the permitted occupancy of the subject premises to two-family dwelling and the termination of the deed restriction—to legalize the occupancy of the subject building as a three-family residence; and

WHEREAS, the applicant notes that a semi-detached three-family residence is permitted at the subject site as-of-right pursuant to ZR § 22-12 and that one side yard with a minimum width of eight (8) feet would be required for either a two-family semi-detached dwelling or other buildings containing residences in an R5 zoning district pursuant to ZR §§ 23-461(b), ZR § 23-462 and 23-49, thus the

MINUTES

requested amendment would not increase the degree to which the four (4) foot wide side yard does not comply with the Zoning Resolution; and

WHEREAS, the applicant states that, apart from the non-compliant side yard, the building otherwise complies in all respects with the applicable use and bulk regulations for the subject zoning district; and

WHEREAS, the Board inquired regarding the compliance of the third residential unit located in the lowest level of the existing building with the Multiple Dwelling Law; and

WHEREAS, by letter dated January 25, 2019, the Fire Department stated that it objected to the application as filed and that, due to the construction classification of the subject building as combustible construction with a designation of IIB, the Fire Department recommends that the applicant be required to provide the following fire and life safety systems: (1) the stairway, soffit of stairs and public hallways providing required means of egress be enclosed and separated from the rest of the building by non-combustible construction having at least two-hour fire-resisting rating meeting the requirements of Section BC 1022 of the 2014 New York City Building Code and Section 170-a.3 of the Multiple Dwelling Law; (2) no door opening be permitted from a garage within the building to the stair hall or public hall, as described in Section 170-a.5 of the Multiple Dwelling Law; (3) the boiler room and furnaces be enclosed and separated from the rest of the building by non-combustible construction having at least a one-hour fire-resistance rating meeting the requirements of Section BC703 of the 2014 New York City Building Code; (4) an automatic sprinkler system that meets the construction requirements of Section BC903 of the 2014 New York City Building Code be installed throughout the building; (5) the proposed dwelling unit contains smoke and carbon monoxide alarms meeting the requirements of Chapter 9 of the 2014 New York City Building Code; (6) all sleeping rooms in the proposed dwelling unit have at least one exterior emergency escape and rescue opening meeting the construction requirements of Section BC1029 of the 2014 New York City Building Code and Section FC1025 of the New York City Fire Code; (7) the Fire Safety and Emergency Preparedness Guide and Bulletins required by Fire Department rule 3 RCNY Section 401-06 be distributed to apartment building residents and staff and the Fire Safety Notice required by that section be installed on the back (inside) of each apartment door in compliance with Fire Code Section 401.6; (8) all fire protection systems and equipment be subject to all required inspection, testing and maintenance in accordance with the New York City Fire Code and Fire Department rules; and (9) storage of combustible materials be prohibited in the boiler room and meter room; and

WHEREAS, the Fire Department further stated that, if the applicant agreed to these recommendation, they are incorporated into revised plans and all issues have been addressed, the department would review the revised plans and issue a Letter of No Objection; and

WHEREAS, while the Board observed that alterations to the building as recommended in the Fire Department's letter would be costly, the Board requested, at the February 5, 2019, hearing, that all work be completed prior to a vote on this application based on the property owner's history of non-compliance with the conditions limiting the occupancy of the building to a two-family and the conversion and occupancy of the building as three-family, contrary to the 1979 variance grant, since at least 2003; and

WHEREAS, in response, the applicant averred that the 2014 New York City Building Code and Multiple Dwelling Law are not applicable because the existing building was constructed in compliance with the 1968 New York City Building Code; and

WHEREAS, the Board notes that, in its review of the subject application, the agency has not been asked to interpret or determine applicability of the Building Code or Multiple Dwelling Law to the subject building; accordingly, the Board has relied on the Fire Department's determination regarding the conditions necessary to ensure safe occupancy of the dwelling unit located in the basement of the existing building; and

WHEREAS, at hearing, the Board inquired as to whether DOB would issue permits allowing the property owner to complete the work recommended by the Fire Department permit prior to an approval of this application by the Board; and

WHEREAS, the Board requested, and the applicant provided a revised set of proposed plans indicating all fire protection measures currently existing in the building as well as identifying alterations necessary to comply with the recommendations set forth in the Fire Department's January letter (the "February 13 Revised Plans"); and

WHEREAS, by letter dated February 14, 2019, the Fire Department reported that it was in receipt of the February 13 Revised Plans; attached a set of marked up plans of notes to be added and deleted, along with a request for a section through the window at the rear basement apartment to verify that the dimensions are in compliance with Section BC1029 of the 2014 New York City Building Code; and requested changes to the plans consistent with the marked up plans; and

WHEREAS, by letter dated March 5, 2019, DOB stated that the agency had completed a preliminary review of the February 13 Revised Plans and advised that the applicant proceed with filing the proposed work under the currently disapproved Alteration Type 1 Job No. 421605971 or file as a separate Alteration Type 2 application; if the February 13 Revised Plans comply with all applicable laws, they will be approved and the applicant may proceed to permit without needing to wait for the variance to be granted; however, DOB will not withdraw the DOB Appeal until the Board grants the amendment to the variance and an amended certificate of occupancy has been issued to reflect three-family occupancy; and

WHEREAS, the applicant subsequently revised the February 13 Revised Plans to reflect all comments received

MINUTES

from the Fire Department, including those in the department's February letter, except for a notation referencing 2014 BC Section 1029 because DOB confirmed that compliance with this section was not required (the "March 22 Revised Plans"); and

WHEREAS, by letter dated March 26, 2019, the Fire Department stated that is in receipt of the March 22 Revised Plans, found the same to be in compliance with the department's letter of January 25, 2019, and Local Law 49 of 2019 and, accordingly, issued a Letter of No Objection, reserving the right to perform periodic inspections to verify compliance with the March 22 Revised Plans and, in the event of non-compliance, request a compliance hearing before the Board; and

WHEREAS, in consideration of DOB's request to keep the DOB Appeal pending and the Fire Department's periodic inspection of the premises, the applicant requested that the Board vote on the pending application, prior to the commencement of construction; and

WHEREAS, the Board agreed to grant the application and amend the variance as requested on condition that the property owner aggressively and lawfully undertake all the construction deemed necessary by the Fire Department to ensure safe occupancy of the third dwelling unit located in the basement; specifically, the Board conditions its approval of the amendment on significant progress having been made on completing construction at the premises in conformance with the March 22 Revised Plans within six (6) months; and

WHEREAS, in the case that substantial progress, as determined by inspections by DOB and the Fire Department, has not been made, the Board will revoke the subject variance amendment grant and grant the DOB Appeal; and

WHEREAS, the Board received several written submissions and oral testimony at hearing from a neighbor and resident of adjacent tax lot 55, located immediately northeast of the subject site, complaining that Board and the owner of the subject property have failed to recognize an easement along the lot line shared by the two adjacent tax lots that would allow the neighbor to access a garage located at the rear of tax lot 55; that the subject site was unlawfully converted to and occupied as a three-family dwelling; and requesting that the Board deny the application to amend the variance and grant the DOB Appeal; and

WHEREAS, the Board notes that the plans approved in connection with the 1979 variance indicate, along the property's northeastern property line shared with tax lot 55, a 3'-5" wide easement, running from the front lot line to a depth of 80 feet, on the subject tax lot within the four (4) foot wide side yard permitted by the variance; and

WHEREAS, with regards to the neighbor's contention that the conversion of the building from a two-family dwelling to a three-family dwelling was unlawful, the applicant notes that the building was converted pursuant to a DOB Alteration Type 1 Permit issued on November 19, 2002, upon submission of a professionally certified application; and

WHEREAS, based on the foregoing, the Board finds

that the requested modifications to the variances are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 19, 1979, so that, as amended, this portion of the resolution reads: "to permit three-family occupancy in the existing building; to eliminate the condition that a deed restricting limiting the occupancy to a two-family dwelling be filed and submitted to the Department of Buildings prior to the issuance of a building permit; to eliminate the condition that the Certificate of Occupancy indicate the libre, page and date of recording of said covenant; and *on further condition*:

THAT all work and site conditions shall conform to drawings filed with this application, dated March 22, 2019 (marked "Received March 27, 2019")—Six (6) sheets;

THAT the applicant shall submit the drawings for full plan review by the Department of Buildings and shall not file, or obtain permits to perform construction in conformance with them, pursuant to Directive 14 of 1975;

THAT the applicant shall make substantial progress, as determined by inspections of the premises by the Department of Buildings and the Fire Department, within six (6) months of this conditional approval, by September 26, 2019, or the Board shall revoke this amendment;

THAT a revised certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 103-79-BZ") be obtained within one (1) year;

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

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

813-87-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 110 BP Property LLC, c/o Hidrock Properties, owners; TSI Cobble Hill LLC dba New York Sports Club, lessee

SUBJECT – Application August 28, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) which expired on April 12, 2018; Amendment to request a change in hours of operation; Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

MINUTES

Commissioner Scibetta.....5
Negative:0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit for a physical culture establishment (“PCE”), previously granted pursuant to ZR § 73-36, which expired on April 12, 2018, and the amendment of the same; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2019, and then to decision on March 26, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, waived its recommendation of this application; and

WHEREAS, the subject site is located on the northwest corner of Boerum Place and Dean Street, partially in an R6B (C2-4) zoning district and partially in a R6A (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 136 feet of frontage along Boerum Place, 100 feet of frontage along Dean Street, 14,250 square feet of lot area and is occupied by a two- (2) story mixed-use residential and commercial building; and

WHEREAS, the subject PCE is located within portions of the first floor (14,250 square feet of floor area) mezzanine (1,100 square feet of floor area) and rooftop of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1988, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize, in a then R6 (C2-3) zoning district, a PCE, operated as Cobble Hill Racquet and Fitness Club on the first floor and mezzanine of an existing two- (2) story building, on condition that all work substantially conform to drawings, as they apply to the objection filed with the application; the special permit be limited to a term of ten (10) years, expiring April 12, 1998; the owner comply with the condition set forth in the conditional negative declaration; the hours of operation be limited to 7:00 a.m. to 11:00 p.m.; there be no change in the ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70, by April 12, 1992; and

WHEREAS, on September 15, 1998, under the subject calendar number, the Board reopened and amended the resolution to extend the term of the special permit for ten

(10) years, expiring April 12, 2008, on condition that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; the hours of operation be limited to 7:00 a.m. to 11:00 p.m.; there be no change in ownership or operating control of the PCE without prior approval of the Board; roof top ventilation and air conditioning systems be pointed away from adjacent residential uses; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by September 15, 1999; and

WHEREAS, on March 23, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to extend the term of the special permit for ten (10) years, to expire April 12, 2018, for a PCE now operated as New York Sports Club on the first floor, mezzanine level and roof, and operated in conjunction with a PCE located within the adjacent two- (2) story building located at 96 Boerum Place and subject to a Board approval under BSA Cal. No. 266-04-BZ, on condition that any and all use substantially conform to drawings, as they apply to the objection, filed with the application; there be no change in ownership or operating control of the PCE without prior approval from the Board; the conditions appear on the certificate of occupancy; the applicant obtain a new certificate of occupancy, which reflects the rooftop tennis bubble use, by March 23, 2011; DOB review the use of the rooftop and the tennis bubble for compliance with relevant regulations, prior to the issuance of a certificate of occupancy; a certificate of occupancy be obtained within one (1) year by March 23, 2011; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit; and

WHEREAS, the applicant also requests an amendment to reflect a change in the hours of operation of the PCE to the following: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that no changes to the operator (New York Sports Club) or operation of the PCE are proposed, other than the subject amendment; and

WHEREAS, by letter dated January 17, 2019, the Fire Department states that the Fire Department Bureau’s

MINUTES

Licensed Public Place of Assembly (“LPPA”) unit performed an inspection on December 26, 2018, and violations were issued for failure to maintain the fire alarm system; at the time of inspection, the fire alarm panel showed a trouble signal in the system; in addition, FDNY repeat summonses were issued for failure to provide records and certificates of fitness for the fire alarm and sprinkler systems; the fire alarm and sprinkler systems were tested satisfactorily to Department standards, with the exception of maintenance records not being provided; and, the Fire Department has no objection to the Board rendering a decision on the subject application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, at hearing, the Board expressed concerns regarding the adequacy of notice of the public hearing on this application to residential tenants of the building due to the lack of evidence as to the posted location of the notice and the inclusion of an incorrect hearing date on the notice; and

WHEREAS, in response, the Board adjourned the hearing to conform to the date to which the notice referred—March 26, 2019—on which date no members of the public appeared to speak on the application and the applicant provided clearer photographic proof that the notice was posted in the proper location in the lobby of the subject building; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that an extension of term of the special permit and the subject amendment to reflect new hours of operation of the PCE are appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 12, 1988, as amended through March 23, 2010, so that, as further amended, this portion of the resolution reads: “to permit an extension of term of the special permit, to expire on April 12, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked “Received August 28, 2018-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 12, 2028;

THAT the hours of operation shall be limited to the following: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 813-87-BZ”) shall be obtained within one (1) year, by March 26, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

189-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application December 13, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the legalization of a Physical Culture Establishment (New York Sports Club) in the cellar, first and second floors in the six-story mixed-use building which expired on November 18, 2018. C6-2 NOHO Historic District.

PREMISES AFFECTED – 232 Mercer Street, Block 532, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a special permit for a physical culture establishment (“PCE”), previously granted by the Board pursuant to ZR § 73-36, which expired on November 18, 2018; and

MINUTES

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 26, 2019, and then to decision on that date; and

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

WHEREAS, Community Board 2, Manhattan, waived its recommendation of this application; and

WHEREAS, the subject site is a through lot bound by Mercer Street to the west and Broadway to the east, between Bleecker Street and West 3rd Street, in C6-2 zoning district and in the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage on each Mercer Street and Broadway, 200 feet of depth, approximately 15,000 square feet of lot area, and is occupied by two (2) buildings: an eight- (8) story mixed-use commercial and residential building and a twelve-story commercial building; and

WHEREAS, the subject PCE is located within portions of the cellar (5,676 square feet of floor space), first floor (4,610 square feet of floor area) and second floor (15,000 square feet of floor area) of the subject buildings; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 2, 1999 when, under BSA Cal. No. 7-97-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize an existing PCE in the cellar level, first and second floors of the subject premises, on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; fire prevention measures be maintained in accordance with BSA-approved plans; the premises remain graffiti free at all times; all signage comply with the Zoning Resolution; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; the term of the special permit be for ten (10) years commencing February 29, 1996, expiring February 28, 2006; and, a new certificate of occupancy be obtained within one (1) year, by February 2, 2000; and

WHEREAS, by letter in 2005, the Board modified the original grant to allow a small enlargement of the previously improved space; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board granted a new special permit, pursuant to ZR § 73-36, to legalize the existing PCE, operating as “New York Sports Club,” in portions of the cellar level (5,676 square feet of floor space), first floor (4,610 square feet of floor area) and second floor (15,000 square feet of floor area) of the subject site on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on November 18, 2018; there be no change in ownership or operating control

of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; prior to the issuance of any permits, the Department of Buildings review the floor area and location of the PCE for compliance with all relevant commercial use regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there has been no change in ownership or operation and that the subject PCE continues to operate as New York Sports Club; massages continue to be performed only by New York State licensed massage therapists, and the hours of operation have been limited by one (1) hour on Friday and Saturday and are now as follows: 5:00 a.m. to 11:00 p.m. Monday through Thursday, 5:00 a.m. to 9:00 p.m. Friday, 6:00 a.m. to 9:00 p.m. Saturday, and 7:00 a.m. to 8:00 p.m. Sunday; and

WHEREAS, the applicant represents that an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—are maintained throughout the PCE space; and

WHEREAS, by letter dated March 14, 2019, the Fire Department states that an inspection was performed on February 12, 2019, by the Bureau’s Licensed Public Place of Assembly (“LPPA”) unit and a violation order (E552535) was issued for failure to obtain a certificate of operation for the public assembly space; that the fire alarm, standpipe and sprinkler systems were inspected and tested satisfactory to the Department, and they have no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention will continue to inspect these premises and enforce all outstanding violation orders; and

WHEREAS, over the course of hearings, the Board raised concerns regarding approval of two (2) sets of banners and poles located on the Mercer Street façade of the premises, by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, in response, the applicant provided an LPC Certificate of Appropriateness, dated December 13, 2012 (“COFA 13-8935”), as well as the LPC-approved plans, dated November 27, 2012, confirming LPC’s approval of those banners; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant

MINUTES

has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of the term of the special permit is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated November 18, 2008, so that, as amended, this portion of the resolution reads: “to grant an extension term for ten (10) years, to expire on November 18, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received February 11, 2019’-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2028;

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

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 189-08-BZ”) shall be obtained within one (1) year, by March 26, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

161-11-A

APPLICANT – Amelia Arcamone-Makinano, for Britton Property, Inc., owner; Yung Cheng Chou, President, lessee. SUBJECT – Application August 13, 2018 – Request for a Reargument and Rehearing pursuant to §§ 1-12.4 and 1-12.5 of the Board’s Rules of Practice and Procedure.

PREMISES AFFECTED – 82-20 Britton Avenue, Block 1517, Lot 3, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Request for re-argument denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and requests for reargument and rehearing of an appeal previously granted by the Board; and

WHEREAS, this application has been filed by an adjacent property owner at 82-22 Britton Avenue, Queens (Block 1517, Lot 5); and

WHEREAS, a public hearing was held on this application on March 26, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the east side of Britton Avenue, between Broadway and Layton Street, in an R7B zoning district, in Queens; and

WHEREAS, the subject site has approximately 25 feet of frontage along Britton Avenue, 100 feet of depth, 2,500 square feet of lot area and is occupied by a six-story, with cellar, mixed-use community-facility and residential building; and

WHEREAS, the adjacent site located at 82-22 Britton Avenue, Queens (Block 1517, Lot 5), is immediately north of the subject site; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 4, 2012, when, under the subject calendar number, the Board granted an appeal to the extent of reversing the permit revocation and stop work order issued by the Department of Buildings (“DOB”) that were based on an outstanding question of owner’s authorization; however, the Board did not direct DOB to eliminate its objections or to issue a certificate of occupancy; and

WHEREAS, in *Arcamone-Makinano v. New York City Dep’t of Bldgs.*, No. 14007/12 (April 8, 2013), the Supreme Court of the State of New York held that the adjacent property owner failed to “file a complaint with the DOB with respect to any of the temporary Certificates of Occupancy, and thus failed to exhaust their administrative remedies,” and that the adjacent property owner was “untimely” in challenging the Board’s determination of the

MINUTES

subject appeal; and

WHEREAS, DOB issued a certificate of occupancy for the subject building on March 18, 2016; and

WHEREAS, the adjacent property owner, the property owner and DOB have submitted testimony on this application; and

ADJACENT PROPERTY OWNER'S POSITION

WHEREAS, the adjacent property owner now seeks a waiver of the Board's Rules of Practice and Procedure and requests reargument and rehearing of the subject appeal; and

WHEREAS, the adjacent property owner states that, in accordance with Section 1-12.5 of the Board's Rules, there is "substantial new evidence . . . that was not available at the time of the initial hearing" that speaks to the following: authorization to perform construction on the adjacent property owner's property; the resulting damage to the adjacent site; the amount of encroachment; and unlawful trespass; and

WHEREAS, the adjacent property owner notes that she did not appeal the Board's resolution issued under the subject calendar number because of pending litigation with the property owner; and

WHEREAS, the adjacent property owner states that subsequent court decisions against the property owner demonstrate that I-beams, a roof cap and brick façade all encroach from the subject site onto the adjacent site; that the adjacent property owner's walkway suffered construction damage, including holes and depressions; and that this construction-related damage worsened water damage to the adjacent site; and

WHEREAS, the adjacent property owner states that the above facts were neither "available nor submitted" during the Board's consideration of the subject appeal; and

WHEREAS, it appears that the adjacent property owner makes no representations with respect to the standards applicable to requests for reargument under Section 1-12.4 or provides any explanation as to why a waiver of the Board's Rules would be necessary or appropriate; and

WHEREAS, accordingly, the adjacent property owner submits that this application should be granted; and

PROPERTY OWNER'S POSITION

WHEREAS, in response to the filing of this application, the property owner of the subject site states that construction of the subject building was substantially complete by September 2009; and

WHEREAS, the property owner submits that issues raised by the adjacent property owner in this application are moot because there is no new evidence that would warrant reopening this appeal and because the subject building was completed in 2016 and has been occupied since that time; and

WHEREAS, the property owner notes that, because the subject building is complete, no further work under the building permits is required, so the Board's rehearing its decision to "rescind revocation of building permits" would have no practical effect because work on the subject

building was already completed pursuant to building permits, and the subject building's certificate of occupancy indicates that work was completed in accordance with all applicable laws; and

WHEREAS, the property owner states that all issues presented by the adjacent property owner in this application have been fully considered and resolved in private litigation; and

WHEREAS, the property owner states that the Board should not grant reargument under Section 1-12.4 of the Board's Rules because the Board did not misapprehend any facts or misapply any legal principles; and

WHEREAS, the property owner states that the Board should not grant rehearing under Section 1-12.5 of the Board's Rules because, rather than being "denied, dismissed, or withdrawn with prejudice," the subject appeal was granted; and

WHEREAS, the property owner further states that waiver of the Board's Rules of Practice and Procedure would not be appropriate because the adjacent property owner fails to allege any basis for such a waiver; and

WHEREAS, the property owner notes that the adjacent property owner presents no new evidence in this application because every fact relevant to the subject appeal was readily available for presentation at hearing during the pendency of the subject appeal; and

WHEREAS, accordingly, the property owner submits that this application should be denied; and

DOB'S POSITION

WHEREAS, DOB states that it takes no position on this application; and

WHEREAS, DOB states that, if the Board reopens the subject appeal and finds the building permits issued in error and subject to revocation, the certificate of occupancy for the subject building was also issued pursuant to said permits; and

WHEREAS, DOB has not filed an application with the Board for revocation of the certificate of occupancy for the subject building; and

DISCUSSION

WHEREAS, at the outset, the Board notes that, since a certificate of occupancy has been issued for the subject building, there is no outstanding work that would be required to be performed pursuant to the building permits the Board considered in the subject appeal; and

WHEREAS, additionally, no application has been filed by DOB for revocation of the certificate of occupancy for the subject building; and

WHEREAS, the Board finds no basis in the record to conclude that it "misapprehended the relevant facts or misapplied any controlling principles of law" in rendering its decision in the subject appeal under Section 1-12.4 of the Board's Rules; and

WHEREAS, rather, the Board's resolution makes clear that four commissioners performed inspections of the site and surrounding area and that Board fully considered evidence submitted and arguments made by all parties—

MINUTES

including the issues of encroachments and owner’s authorizations under the New York City Building Code; and

WHEREAS, notably, the Board found that DOB’s issuance of a stop work order and permit revocation for a substantially complete building—where no further work was being performed—was unnecessary and unreasonable under the circumstances; and

WHEREAS, the Board also took no position as to the meaning of a Side Yard Agreement—which was the subject of private litigation presented by the adjacent property owner in this application and which did not form the basis of the Board’s decision in the subject appeal; and

WHEREAS, the Board finds Section 1-12.5 of the Board’s Rules inapplicable to this application because the subject appeal was granted and was not “denied, dismissed, or withdrawn with prejudice”; and

WHEREAS, furthermore, the Board finds no basis to conclude that the adjacent property owner’s submission of court decisions constitutes “substantial new evidence . . . that was not available at the time of the initial hearing” or “a material change in plans or circumstances”; and

WHEREAS, instead, the Board notes that it considered the issues of encroachments and owner’s authorizations in the subject appeal, that work on the subject building was already substantially complete and that the Board specifically did not direct DOB to eliminate its objections or to issue any certificate of occupancy for the subject building; and

WHEREAS, the Board also notes that all work on the subject building is complete, a certificate of occupancy has been issued, the building has been occupied for years and DOB has not filed an application for revocation of the subject building’s certificate of occupancy, which is not before the Board in this application; and

WHEREAS, the Board finds no basis to conclude that any waiver of the Board’s Rules of Practice and Procedure is appropriate for this application; and

CONCLUSION

WHEREAS, based upon its review of the record and inspection of the site and surrounding area, the Board has determined that the requested waiver of the Board’s Rules of Practice and Procedure and requests for rehearing and reargument are not appropriate and that the adjacent property owner has not substantiated a basis to warrant exercise of discretion.

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

150-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 30 Broad Street Venture LLC, owner; TSI 30 Broad Street LLC dba New York Sports Club, lessee.

SUBJECT – Application July 13, 2016 – Amendment of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (New York Sports Club) in portions of the second floor and second floor mezzanine with an entrance at the ground level. The amendment seeks to enlarge the establishment into a portion of the sub-cellar and reflect a change in the operator. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, Block 24, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for the amendment of a special permit for a physical culture establishment (“PCE”), previously granted pursuant to ZR § 73-36, to legalize an enlargement in floor area and permit a change in operator; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 26, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the southeast corner of Broad Street and Exchange Place, in a C5-5 zoning district and in the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 88 feet of frontage along Broad Street (an individual landmark street located within the Street Plan of New Amsterdam and Colonial New York), 150 feet of frontage along Exchange Place, 88 feet of frontage along New Street, 12,778 square feet of lot area and is occupied by a 48-story commercial building; and

WHEREAS, the subject PCE is located within portions of the sub-cellar (9,340 square feet of floor space) first floor (615 square feet of floor area), second floor (10,494 square feet of floor area) and second floor mezzanine (4,697 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 2014, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE, operated as BFX Studio, in portions of the first floor (615

MINUTES

square feet of floor area), second floor (10,494 square feet of floor area) and second floor mezzanine (4,697 square feet of floor area) of an existing 48-story commercial building, contrary to ZR § 32-10, on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant expire on November 18, 2024; there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board; accessibility compliance be as reviewed and approved by the Department of Buildings (“DOB”); fire safety measures be installed and/or maintained as shown on the Board-approved plans; the conditions appear on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by November 18, 2018; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the applicant seeks an amendment to the previous approval reflecting a change to the owner and operator of the PCE, to “New York Sports Club,” and legalizing the expansion of the PCE space, from 15,806 square feet of gross floor area to 27,538 square feet of gross floor area; and

WHEREAS, the PCE now occupies 9,340 square feet of floor space on sub-cellar B with men’s and women’s locker rooms with bathrooms, an open fitness area, spaces for exercise equipment, and mechanical and storage spaces; 1,170 square feet of floor area on the first floor with entrance to the PCE and a reception area; 11,400 square feet of floor area on the second floor with men’s and women’s locker rooms with bathrooms and showers, a spin studio, exercise studio, cardio area, office and storage areas; and, 5,628 square feet of floor area on the second floor mezzanine with a cardio area, mechanical spaces, bathrooms and offices;

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

WHEREAS, by letter dated March 14, 2019, the Fire Department states that the Department’s Licensed Public Place of Assembly (“LPPA”) unit inspected the PCE on February 13, 2019, and that a violation order (E552548) was issued for failure to obtain a certificate of operation for the public assembly space; the fire alarm, standpipe and sprinkler systems were inspected and tested satisfactorily to Department standards; and

WHEREAS, by letter dated March 26, 2019, the Fire Department withdrew its request, made at the hearing held

on February 12, 2019, that post approval amendments be filed for the Alteration Application Type 1 and Public Assembly applications prior to the Board’s decision; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Short Form, CEQR No. 15-BSA-015M, received October 17, 2018; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that the subject amendment to reflect a change to the owner and operator of the PCE and to legalize an expansion of the PCE space on the sub-cellar, first floor, second floor and second floor mezzanine, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and *amends* the resolution, dated November 18, 2014, so that, as amended, this portion of the resolution reads: “to permit a change to the owner and operator of the PCE, to “New York Sports Club,” and permit an enlargement of the PCE space (9,340 square feet of floor space in the sub-cellar, 1,170 square feet of floor area on the first floor, 11,400 square feet of floor area on the second floor and 5,628 square feet of floor area on the second floor mezzanine), *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received October 17, 2018’-Fifteen (15)sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2024;

THAT all signage on the site comply with all applicable provisions of the Zoning Resolution;

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

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

MINUTES

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 150-14-BZ”) shall be obtained within one (1) year, by March 26, 2020;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

429-29-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubricatorium to an accessory convenience store with a drive-thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

156-73-BZ

APPLICANT – The Design Alliance/Gary Maranga, for Albert Einstein College of Medicine, owner.

SUBJECT – Application June 28, 2018 – Extension of Term of a previously approved variance made pursuant to Section 60(3) of the Multiple Dwelling Law, permitting the use of Transient parking for the unused and surplus tenants' space in the required accessory garage of a multiple dwelling which expires on June 26, 2013. R6 and R4 zoning districts.

PREMISES AFFECTED – 1975 Eastchester Road, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group (“UG”) 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

MINUTES

26-02-BZ

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

SUBJECT – Application December 20, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses, which expired on April 15, 2017; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1680 Richmond Avneue a/k/a 3101 Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application January 3, 2017 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use contrary to underlying use regulations which expired on December 4, 2016. M2-1 zoning district.

PREMISES AFFECTED – 109-09 15th Avenue, Block 4044, Lot 60, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-316-A

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

SUBJECT – Application December 12, 2017 – Proposed development of a one-story and mezzanine warehouse building (UG 16B) not fronting on a mapped street contrary to General City Law §36. M1-1 (Special Richmond District).

PREMISES AFFECTED – 95 Androvette Street, Block 7407, Lot 72, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 21, 2017, acting on New Building Application No. 520313438, reads in pertinent part:

“The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore . . . no certificate of occupancy can be issued pursuant to Article 3, Section 36 of General City Law”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a two-story building that does not front on a mapped street; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019, and then to decision on March 26, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, Staten Island Borough President James Oddo submitted testimony on this application with comments including: sidewalk, street drainage and curb improvements should be installed pursuant to an approved Builders Pavement Plan (“BPP”); daylighting should be required at the intersection of Androvette Street and Kreisler Street to assist with obscured sight triangles created by proposed building mass along record street lines; street trees should be installed; curb cut permits should be obtained from DOB for Androvette Street; on-site retention of storm water should be examined to address potential adverse flooding conditions on Corporation Counsel Opinion streets; Fire Department review and approval for Fire Code compliance should be considered in this application; the alley to the north of the subject site is a

MINUTES

separate tax lot; cross-access issues with respect to zoning requirements for the adjoining alley, as reviewed and approved by the Department of City Planning, should be considered as part of this application; the proposed utility poles, transformers and other street appurtenances crossing unmapped streets or identified for relocation should be identified; the creation of any adverse conditions on adjoining manufacturing properties should be considered; curb- to- curb repaving along both street frontages of Androvetta Street and Kreisler Street should be proposed as part of this application, and no isolated utility cut finishes should be permitted; and the applicant should resubmit a PD1 application to the Borough President's Topographical Bureau for issuance of a final house number; and

WHEREAS, the subject site is located on the northeast corner of Androvetta Street and Kreisler Street, in an M1-1 zoning district, in the Special South Richmond Development District, in Staten Island; and

WHEREAS, the site has approximately 104 feet of frontage along Androvetta Street, 104 feet of frontage along Kreisler Street, 7,783 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop a two-story mixed-use commercial and manufacturing building fronting on Androvetta Street and Kreisler Street, which are not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the proposed building complies with all zoning regulations applicable in the underlying zoning district and proposed to provide seven off-street accessory parking spaces; and

WHEREAS, the applicant submits that, according to a Corporation Counsel Opinion letter, dated April 11, 2006, Androvetta Street has a width between 30 feet and 50 feet adjacent to the subject site; that, according to a Corporation Counsel Opinion letter, dated March 15, 2008, Kreisler Street has a width between 42 feet and 50 feet adjacent to the subject site; and that both Androvetta Street and Kreisler Street are open and in use; and

WHEREAS, the applicant states that the subject site only has frontage along Androvetta Street and Kreisler Street, both of which are existing, paved two-way unmapped streets; and

WHEREAS, the applicant states that Androvetta Street and Kreisler Street both provide access to several existing improved lots in the area, the majority of which contain commercial or manufacturing uses or are vacant; and

WHEREAS, the applicant further submitted a flood map, indicating the subject site is not located within a flood zone; a septic approval for the proposed development; an approved Builders Pavement Plan; an approved site connection proposal, including drywells for storm water; a statement that the subject site is not located in wetlands or wetlands adjacent areas with no New York State Department of Environmental Conservation review or approval required; a statement that the applicant has no objection to any utility poles, transformers, street signs and traffic lights authorized

by the Department of Transportation for placement outside the subject site; a clarification that access to the alley north of the subject site is not proposed through the subject site in this application; and a site plan revised to reflect sidewalk dimensions, parking stall dimensions, curb-to-curb street widths, fire hydrant locations and street trees; and

WHEREAS, in response to questions from the Board at hearing with respect to maintenance related to Androvetta Street and Kreisler Street, the applicant submitted a draft restrictive declaration putting the property owner on notice of its potential maintenance obligations in order to provide assurance to the Board that, in the event that the City is not responsible for future maintenance, the property owner will ensure that both Androvetta Street and Kreisler Street will be maintained in good condition; and

WHEREAS, by correspondence dated September 20, 2018, the Department of City Planning states that it has no comments on this application but confirms that cross-access regulations do not apply; and

WHEREAS, by letter dated February 21, 2019, the New York City Department of Environmental Protection states that, based on DEP maps, there is an 8" diameter water main in Androvetta Street between Kreisler Street and Arthur Kill Road and an 8" diameter water main in Kreisler Street between Androvetta Street and Arthur Kill Road; that the proposed drainage plan shows a 10" diameter sanitary and 24" diameter storm sewers in Androvetta Street between Kreisler Street and Arthur Kill Road with an 18" diameter sanitary and 18" diameter storm sewers in Kreisler Street, between Androvetta Street and Arthur Kill Road; that the proposed sanitary and storm sewers for the subject site shall be discharged as part of a certified Site Connection Proposal (No. 7969); that all sanitary, storm and water connections shall be maintained by the owners and shall not be maintained by the City of New York; and that, accordingly, DEP has no objection to this application; and

WHEREAS, by letter dated March 26, 2019, the Fire Department states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated November 21, 2017, acting on New Building Application No. 520313438, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a two-story building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received March 25, 2019"-One (1) sheet; and *on further condition*:

THAT the proposed sanitary and storm sewers for the subject site shall be discharged as part of a certified Site Connection Proposal (No. 7969), and all sanitary, storm and water connections shall be maintained by the owners and

MINUTES

shall not be maintained by the City of New York;

THAT prior to the issuance of the Board's resolution, a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

DECLARATION made this ____ day of _____ 2019, by AMC Realty Holdings LLC, hereinafter referred to as the "Declarant," located at 262 Ramapo Avenue, Staten Island, New York.

WHEREAS, the Declarant is the owner of certain land located in the City and State of New York, Borough of Staten Island, designated as Block 7407 Lot 72 and 75 as depicted on the Tax Map of the City of New York.

WHEREAS, the Declarant proposed to merge Lots 72 and 75 to create a new tax lot to be known as Lot 72 within Block 7407, also known as 95 Androvette Street, and hereinafter referred to as the "Subject Lot".

WHEREAS Androvette Street and Kreisler Street, the streets upon which the Subject Lot fronts, have Corporate Counsel Opinions issued April 11, 2006 and March 15, 2008, respectively, declaring that the two streets are record streets in public use.

WHEREAS Androvette Street and Kreisler Street, as of the date of this declaration, are currently being maintained by the City of New York, including street repairs and sanitation service.

WHEREAS the City of New York has not placed the portion of Androvette Street and Kreisler Street upon which the Subject Lot fronts ("Street Frontage") on the official map of the City of New York, and as such may not be required to maintain this portion of Androvette Street and Kreisler Street in the future.

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. No. 2017-316-A for approval to construct a building on the Subject Lot that does not front on a final mapped street, contrary to Article III, Section 36 of the General City Law;

WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the subject building.

NOW, THEREFORE, in consideration of BSA approval to allow the proposed construction of a building not fronting on a legally mapped street, contrary to Article III, General City Law 36, Declarant does hereby declare that Declarant and its successors and/or assigns, upon the City of New York's abandonment of maintenance of the Street Frontage, shall be responsible for future

maintenance of the Street Frontage to the center line of Androvette Street and Kreisler Street, respectively, including street repairs and sanitation services thereon, as depicted on the site plan annexed hereto as Schedule A and by this reference made a part hereof.

1. This declaration shall become void upon the addition of the Street Frontage to the official map of the City of New York.
2. This declaration may not otherwise be modified, amended or terminated without the prior written consent of the BSA;
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
5. This declaration shall be recorded at the office of the Richmond County Clerk against the Subject Lot and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the Subject Lot and in any deed for the conveyance thereof.

THIS DECLARATION IS ONLY EFFECTIVE UPON APPROVAL BY THE BOARD OF STANDARDS AND APPEALS OF THE APPLICATION FILED UNDER CAL. NO. 2017-316-A AND UPON SUBSEQUENT COMPLETION OF CONSTRUCTION AND ISSUE OF A CERTIFICATE OF OCCUPANCY PURSUANT TO SUCH APPROVALS, OTHERWISE THIS DECLARATION IS OF NO EFFECT.

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2017-316-A"), shall be obtained within four (4) years, by March 26, 2023;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals,

MINUTES

March 26, 2019.

2017-202-A

APPLICANT – Law Office of Steven Simicich, for Over Development, Ltd., owner.

SUBJECT – Application June 2, 2017 – Proposed construction of a two-family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3S (SHPD) zoning district.

PREMISES AFFECTED – 43 Cunard Avenue, Block 623, Lot 252, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.

SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.

SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for postponed hearing.

ZONING CALENDAR

2016-4127-BZ

CEQR #16-BSA-083K

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26th Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26th Street, Block 6773, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 12, 2016, acting on Department of Buildings (“DOB”) Application No. 321242534, reads in pertinent part:

1. The proposed [floor area ratio] and lot coverage is contrary to Sec. 23-142 of the N.Y.C. Zoning Resolution;
2. Proposed horizontal enlargement provides less than the required rear yard contrary to Sec. 23-47 of the N.Y.C. Zoning Resolution;
3. The proposed perimeter wall height is contrary to Sec. 23-631 of the N.Y.C. Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the enlargement of a detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, rear yards and perimeter wall height, contrary to ZR §§ 23-142, 23-47 and 23-631(b); and

WHEREAS, a public hearing was held on this application on April 4, 2017, after due notice by publication in *The City Record*, with continued hearings on June 20, 2017, November 21, 2017, June 19, 2018, January 29, 2019, and March 26, 2019, and then to decision on that date; and

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

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

WHEREAS, the Board was in receipt of one (1) form letter in support, and one (1) form letter in objection to, this application; and

MINUTES

WHEREAS, the subject site is located on the east side of East 26th Street, between Avenue P and Kings Highway, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along East 26th Street, 100 feet of depth, 6,000 square feet of lot area, and is occupied by a two- (2) story plus cellar and attic single-family detached dwelling containing 1,998 square feet of floor area (0.33 FAR), 4,983 square feet of open space, a lot coverage of 17 percent, a front yard with a depth of 28 feet, a rear yard with a depth of 38'-10-3/4", a perimeter wall height of 23'-7-1/2" and a total height of 30'-7-5/8", two (2) side yards with widths of five (5) feet and 17'-10", and a detached one- (1) story garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area

between the *building* that is being *enlarged* and the *side lot line*;

- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to demolish the existing garage and both vertically and horizontally extend the dwelling into the rear yard, front yard and side yards, resulting in a two- (2) story plus attic and cellar single-family dwelling with 4,786 square feet of floor area (0.8 FAR), 57 percent of open space (3,432 square feet), a lot coverage of 43 percent (2,568 square feet), a front yard with a depth of 16 feet, a rear yard with a depth of 23 feet at the first floor and 25 feet at the second floor, a perimeter wall height of 23'-7-1/2" and a total height of 32'-1-3/4", and two (2) side yards with widths of five (5) feet and eight (8) feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,017 square feet of floor area to 2,568 square feet of floor area, the second floor from 982 square feet of floor area to 1,963 square feet of floor area, and the attic from 0 square feet of floor area to 254 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (3,000 square feet of floor area), a maximum of

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

35 percent lot coverage is permitted (2,100 square feet), a rear yard with a minimum depth of 30 feet is required, and a maximum perimeter wall height of 21 feet is permitted pursuant to ZR §§ 23-142, 23-47, and 23-631(b); and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R3-2 zoning district (the “Study Area”) concluding that, of the 72 qualifying residences, 33 residences (46 percent) have an FAR of greater than 0.6, ranging from 0.61 to 1.14; and

WHEREAS, with regards to lot coverage, the applicant demonstrated that, within the Study Area, 21 residences (29 percent) have a lot coverage of 40 percent or greater, ranging from 40 percent to 60 percent, and 10 residences (14 percent) have a lot coverage of 49 percent or greater; and

WHEREAS, with regards to rear yard conditions, the applicant demonstrated that, within the Study Area, 16 residences (22 percent) have rear yards with depths of 25 feet or less; and

WHEREAS, the applicant initially proposed a rear yard with a depth of 20 feet at the first and second floor and, in light of this study, the Board requested the applicant revise the proposal to provide more rear yard depth; and

WHEREAS, in response, the applicant proposes to provide a rear yard with a depth of 23 feet at the first floor and 25 feet at the second floor; and

WHEREAS, with regards to perimeter wall height, the applicant demonstrated that the one- (1) family detached residence located immediately adjacent to the south has a non-complying perimeter wall height of 23’-9” and the proposed perimeter wall height of the subject property, 23’-7-1/2”, is equal to or less than the height of the adjacent building’s non-complying perimeter wall facing the street; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16BSA083K, dated February 26, 2016; and

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

Therefore, it is Resolved, that the Board of Standards

and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R3-2 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot coverage, rear yards and perimeter wall height, contrary to ZR §§ 23-142, 23-47 and 23-631(b); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “February 25, 2019 ”-Thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.8 (4,786 square feet of floor area), a maximum lot coverage of 43 percent (2,568 square feet), a rear yard with a minimum depth of 23 feet at the first floor and a minimum depth of 25 feet at the second floor and a maximum perimeter wall height of 23’-7-1/2”, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by March 26, 2023;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2016-4127-BZ”) shall be obtained within four (4) years, by March 26, 2023;

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

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

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

Adopted by the Board of Standards and Appeals,
March 26, 2019.

MINUTES

2018-106-BZ

CEQR #19-BSA-001K

APPLICANT – Eric Palatnik, P.C., for Tatiana Markel, owner.

SUBJECT – Application July 3, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family residence to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 124 Hastings Street, Block 8750, Lot 336, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 11, 2018, acting on Department of Buildings (“DOB”) Application No. 321684432, reads in pertinent part:

Proposed horizontal and vertical enlargement to an existing two[-] family house in an R3-1 district is non-compliant in regard to:

1. Proposed floor area ratio is contrary to ZR 23-142;
2. Proposed lot coverage is contrary to ZR 23-142;
3. Proposed open space is contrary to ZR 23-142;
4. Proposed rear yard is contrary to ZR 23-47;
5. Proposed side yard is contrary to ZR 23-461(a);

And must be [referred] to the Board of Standards and Appeals for a special permit pursuant to ZR 73-622; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-1 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, open space, rear yards and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461(a); and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 26, 2019, and then to decision on that date; and

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

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

WHEREAS, the Board was in receipt of one (1) form letter in support this application; and

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

WHEREAS, the site has approximately 40 feet of frontage along Hastings Street, 104 feet of depth, 4,160 square feet of lot area, and is occupied by a two (2) story plus cellar two- (2) family detached dwelling containing 2,780 square feet of floor area (0.67 FAR), 2,682 square feet of open space (65 percent open space), a lot coverage of 35 percent (1,478 square feet), a front yard with a depth of 18 feet, a rear yard with a depth of 25’-4”, and two (2) side yards with widths of 10’-1” and 4’-8”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged*

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
 - (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached two- (2) family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to convert and both vertically and horizontally enlarge the building, resulting in a two- (2) story plus cellar one- (1) family dwelling with 3,042 square feet of floor area (0.73 FAR), 63 percent of open space (2,639 square feet of open space), 37 percent of lot coverage (1,521 square feet), a front yard with a depth of 18 feet, a rear yard with a depth of 25'-4", and two (2) side yards with widths of 10'-1" and 4'-8"; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,478 square feet to 1,521 square feet and the second floor from 1,302 square feet to 1,521 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (2,080 square feet), a minimum of 65 percent open space is required (2,704 square feet), a maximum of 35 percent lot coverage is permitted (1,456 square feet), a rear yard with a minimum depth of 30 feet is required, and two (2) side yards, each with minimum widths of five (5) feet and a minimum total combined width of 13 feet are required pursuant to ZR §§ 23-142, 23-47, and 23-461(a); and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying rear yard, and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying rear yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R3-1 zoning district (the "Study Area") concluding that, of the 73 qualifying residences, 45 residences (62 percent) have an FAR of greater than 0.5, ranging from 0.52 to 0.99, and 14 residences (19 percent) have an FAR of 0.73 or greater; and

WHEREAS, with regards to lot coverage and open space, the applicant demonstrated that, within the Study Area, 28 residences (38 percent) have a lot coverage greater than 35 percent, ranging from 36 percent to 51 percent, and 24 residences (33 percent) have a lot coverage of 37 percent or greater; and

WHEREAS, with regards to rear yard conditions, the applicant demonstrated that, of the 23 other one- (1) or two- (2) family dwellings located on the subject block, 15 residences (65 percent) have rear yards with depths less than 30 feet, and 11 residences (48 percent) have rear yards with depths less than 25'-4", including both dwellings immediately adjacent to the subject site, which have rear yard depths of 12 feet and 23 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA001K dated July 12, 2018; and

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

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

MINUTES

Review and makes the required findings under ZR § 73-622 to permit, in an R3-2 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot coverage, open space, rear yards and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461(a); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "March 26, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.73 (3,042 square feet of floor area), a minimum of 63 percent of open space (2,639 square feet), a maximum lot coverage of 37 percent (1,521 square feet), a rear yard with a minimum depth of 25'-4", and two (2) side yards with minimum widths of 10'-1" and 4'-8", as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by March 26, 2023;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-106-BZ") shall be obtained within four (4) years, by March 26, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, March 26, 2019.

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2016-4240-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for adjourned hearing.

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – Variance (§72-21) to permit commercial retail (UG 6) on the level of the ground floor contrary to ZR §42-14. M1-5B (SoHo Cast Iron Historic District).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*CrossFit*) within an existing one store commercial building contrary to ZR §42-10 located in M1-4 zoning district.

MINUTES

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – Special Permit (§73-49) to permit roof top parking on a new four-story accessory parking garage serving a four-story office building contrary to ZR §44-11. M1-1 College Point Special District.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Laid over to May 7, 2018, at 10 A.M., for adjourned hearing.

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – Variance (§72-21) to permit the construction of a seven-story plus penthouse mixed commercial and residential building contrary to floor area regulations of ZR §111-20; street wall regulations of ZR §23-662; accessory parking regulations of ZR §13-11; and the curb cut location requirements of ZR §13-241. C6-2A (Special Tribeca Mixed Use District. Tribeca East Historic District.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. Mcleannan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 29, 2019
1:00 P.M.**

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

ZONING CALENDAR

2018-108-BZ

CEQR #19-BSA-002M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for MIP One Wall Street Acquisition, LLC, c/o Macklowe Properties 767 Fifth Avenue owner; Life Time Inc., lessee. SUBJECT – Application July 9, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) to be located on 72,630 square feet of the ground floor, and portions of three below-grade levels of a mixed-use residential and commercial building contrary to ZR §32-10. C5-5 Special Lower Manhattan District (One Wall Street – North Tower is designated as an Individual New York City Landmark).

PREMISES AFFECTED – 1 Wall Street, Block 23, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 7, 2018, acting on DOB Application No. 121188437, reads in pertinent part:

ZR 32-31/ZR 73-36 The proposed Physical Culture Establishment in zoning district C5-5 is not permitted as of right. A Special Permit is required from the Board of Standards and Appeals as per Sections 32-31 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an C5-5 zoning district, in the Special Lower Manhattan District, a physical culture establishment (“PCE”) on the basement, mezzanine, and cellar, sub-cellar 1 and sub-cellar 2 of an existing 51-story plus basement, mezzanine, and sub-cellars mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 26, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

MINUTES

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

WHEREAS, the subject site is bound by Wall Street to the north, Broadway to the west, Exchange Place to the south, and New Street to the east, in an C5-5 zoning district, in the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 102 feet of frontage along Wall Street, 362 feet of frontage along Broadway, 133 feet of frontage along Exchange Place, 358 feet of frontage along New Street, 42,316 square feet of lot area and is occupied by an existing 51-story plus basement, mezzanine, and sub-cellar mixed-use residential and commercial building that is designated as an individual landmark by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 29, 1929, when, under BSA Cal. No. 944-28-BZ, the Board granted a variance of the applicable height district regulations to permit the area of the tower to exceed 25 percent of the lot area below the 36th floor and distance from the center line of New Street on condition that the structure be erected as to its height and setback layout as indicated on the plans filed with the appeal, all permits be obtained within nine (9) months and the building prosecuted to completion without interruption or unnecessary delay; and

WHEREAS, on April 23, 1929, under BSA Cal. No. 944-28-BZ, the Board reopened and voted to accept corrections to the previously approved drawings; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the proposed PCE will occupy 3,377 square feet of floor area on the basement level with the entrance to the PCE, a reception area and accessory café; 382 square feet of floor space on the mezzanine with a mechanical area; 22,224 square feet of floor space in the cellar with men’s and women’s locker rooms with showers, saunas, steam rooms and whirlpools, a salon, a spa, a café with a kitchen area, storage areas and office space; 17,427 square feet of floor space in sub-cellar 1 with spaces for group fitness, yoga, pilates, cycling and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

boxing, a lounge area, a foyer and mechanical spaces; and, 28,220 square feet of floor space in sub-cellar 2 with spaces for training, weights, exercise machines, movement, cardio and stretching, a “PT Desk,” a kids’ gym with reception, play area, activity studio and maze, offices and mechanical spaces; and

WHEREAS, the PCE is proposed to operate as “LifeTime,” with the following hours of operation: 4:00 a.m. to 12:00 a.m., Monday through Friday, and, 7:00 a.m. to 12:00 a.m., Saturday and Sunday; and

WHEREAS, the applicant states that, while residential units at the subject site do not begin until the fourth floor, the PCE will utilize a variety of rules, controls and sound and vibration attenuation measures to maintain sound and vibration solely within the exercise studios; specifically, the PCE will strictly prohibit the dropping of dumbbell free weights; music volume will be maintained at moderate levels; heavier free weights will be located in a specific area protected with 2.75-inch flooring mats to dissipate impact vibrations from any dropping of free weights; all weight half-racks will be equipped with platforms specifically designed to mitigate noise and vibration associated with their use; resilient hung/sound isolation ceilings will be installed at selected locations of the fitness floor, and sound attenuation-batt insulation will be installed within selected partitions throughout the PCE; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located entirely in an existing building in an area characterized by commercial uses in high-rise office buildings and is compatible with comparable PCEs in the neighborhood; and

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

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics, and martial arts, and facilities for the practice of massage by New York State licensed massage therapists; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE is separated from the residential uses within the subject building by three floors, is mostly below grade, and the applicant anticipates the PCE will be an asset for the community, offering opportunities for health, well-being and fitness improvement for community members; and

WHEREAS, the applicant states that a wet sprinkler system and an approved fire alarm system connected to an FDNY central station—including tamper/water flow on all sprinkler zones, HVAC shut down, smoke detectors, manual pull stations, heat sensors, and proper ventilation and smoke purge—will be installed within the proposed PCE space; and

WHEREAS, by letter dated March 13, 2019, the Fire Department states that the premises is currently under major renovation to convert from business use to residential use, applications have been filed for new sprinkler, standpipe and fire alarm systems throughout; the Bureau’s Construction, Demolition and Abatement (CDA) unit is inspecting the premises; once work has been completed, the Bureau of Fire Prevention will inspect these new systems throughout the premises as well as the PCE space; as noted in the applicant’s “Statement of Facts,” a Place of Assembly certificate of operation would be obtained for the accessory café on the cellar level, to accommodate 78 persons, and in the contiguous assembly spaces on sub-cellar 2, to accommodate 383 persons; the Bureau’s Licensed Public Place of Assembly (“LPPA”) unit have been notified of this application and will inspect the premises when work is completed; and, the Fire Department has no objection to the Board rendering a decision on this application as the Bureau of Fire Prevention will continue to inspect these premises; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant submits that the New York City Landmarks Preservation Commission, pursuant to Certificate of No Effect (CNE-19-31437) dated October 11, 2018, permitted interior alterations at the mezzanine, basement, cellar, sub-cellar 1, and sub-cellar 2 levels, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical, and HVAC work; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR 617.4 and New York City Executive Order 91 of 1977; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Full Form CEQR No. 19BSA002M, received January 7, 2019; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

MINUTES

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

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on the basement, mezzanine, and cellar, sub-cellar 1 and sub-cellar 2, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, § 6-07(b) Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-5 zoning district, in the Special Lower Manhattan District, the operation of a physical culture establishment on the basement, mezzanine, cellar, sub-cellar 1 and sub-cellar 2 of an existing 51-story plus basement, mezzanine cellar and sub-cellars mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “March 21, 2019”-Ten (10) sheets and “Received March 27, 2019”-One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on March 26, 2029;

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

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

THAT a public assembly permit shall be obtained;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-108-BZ”), shall be obtained within four (4) years, by March 26, 2023;

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

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

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its

jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 26, 2019.

2018-141-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Davidov, owner.

SUBJECT – Application August 28, 2018 – Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district.

PREMISES AFFECTED – 110-37 68th Drive, Block 2227, Lot 48, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2018-156-BZ

APPLICANT – Sheldon Lobel, P.C., for PSCH Cypress Avenue Housing Development Fund Corp. d/b/a WellLife Network Inc., owner.

SUBJECT – Application October 12, 2018 – Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 2 residential building (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing contrary to ZR §§ 23-142 (floor area and FAR), 23-142(g) (open space), 23-22 (density regulations), 23-45(a) (front yard), 23-451 (planting requirements), 23-631(d) (front height and setback), 23-632(b) (side setback) and 25-251 (parking). R5 zoning district.

PREMISES AFFECTED – 80-97 Cypress Avenue, Block(s) 3731/3732, Lot(s) 65,54, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 19, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-----------------------------------|-----|
| DOCKET | 287 |
| CALENDAR of April 30, 2019 | |
| Morning | 289 |
| Afternoon | 289 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, April 9, 2019**

Morning Calendar290

Affecting Calendar Numbers:

| | |
|--------------|--|
| 410-68-BZ | 85-05 Astoria Boulevard, Queens |
| 279-12-BZ | 27-24 College Point Boulevard, Queens |
| 539-66-BZ | 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Queens |
| 540-84-BZ | 341 Soundview Avenue, Bronx |
| 751-60-BZ | 105 New Dorp Lane aka 1395 New Dorp Plaza, Staten Island |
| 271-13-BZ | 129 Norfolk Street, Brooklyn |
| 277-13-BZ | 1769 Fort George Hill, Manhattan |
| 2017-318-A | 155 Johnson Street, Staten Island |
| 2016-4171-BZ | 823 Kent Avenue, Brooklyn |
| 2018-38-BZ | 1717 Richmond Road, Staten Island |
| 2018-118-BZ | 10 Avenue W, Brooklyn |
| 2018-155-BZ | 1123 East 27 th Street, Brooklyn |
| 1-96-BZ | 600 McDonald Avenue, Brooklyn |
| 56-02-BZ | 317 Dahill Road, Brooklyn |
| 268-14-BZ | 231-06/10 Northern Boulevard, Queens |
| 77-15-BZ | 244-36 85 th Avenue, Queens |
| 2017-56-BZ | 1321 Richmond Road, Staten Island |
| 2017-244-BZ | 2208 Boller Avenue, Bronx |
| 2017-309-BZ | 406 Remsen Avenue, Brooklyn |
| 2018-39-BZ | 1249 East 23 rd Street, Brooklyn |
| 2018-56-BZ | 83 Coleridge Street, Brooklyn |
| 2018-104-BZ | 1234-1238 East 22 nd Street, Brooklyn |
| 2018-109-BZ | 9-03 44 th Road, Queens |
| 2018-116-BZ | 1982 Utica Avenue, Brooklyn |

Afternoon Calendar311

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-103-BZ | 936 Avenue R, Brooklyn |
| 2018-152-BZ | 2 East 15 th Street aka 71 Fifth Avenue, Manhattan |
| 2017-142-BZ | 3000 Coney Island Avenue, Brooklyn |

DOCKETS

New Case Filed Up to April 9, 2019

2019-64-BZ

1334 East 24th Street, Block 7659, Lot(s) 0061, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to FAR and open space (ZR §23-141); side yards (ZR §§23-461) and rear yard (§23-47). R2 zoning district. R2 district.

2019-65-BZ

373 Avenue W, Block 7153, Lot(s) 0046, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement and conversion of an existing two-family home to a single-family residence, contrary side yards (ZR §23-461) and rear yard (§23-47). R4 Special Ocean Parkway district. R4 district.

2019-66-BZ

15 Terrace View Avenue, Block 2215, Lot(s) 173, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district. M1-1 district.

2019-67-BZ

2781 Coyle Street, Block 8805, Lot(s) 150, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district. R5 district.

2019-68-A

235 Industrial Loop, Block 7206, Lot(s) 314, Borough of **Staten Island, Community Board: 3**. Proposed construction of a one-story warehouse building (UG 16) on site not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond. M3-1(SRD) district.

2019-69-A

341 Mallory Avenue, Block 03417, Lot(s) 174, Borough of **Staten Island, Community Board: 2**. Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district. R3X district.

2019-70 -A

343 Mallory Avenue, Block 03417, Lot(s) 0173, Borough of **Staten Island, Community Board: 2**. Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district. R3X district.

2019-71-BZ

2868 Fulton Street, Block 3950, Lot(s) 0017, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) to be located on the first and second floor of an existing commercial building. C2-4 (R6A) (EC6) zoning district. C2-4(R6A) district.

2019-72-BZ

555 Tenth Avenue, Block 1069, Lot(s) 1001-1006, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical culture establishment (NFC Amenity Management) to be located on a portion of the ninth floor of an existing mixed-use building. C2-4 (Hudson Yards Special Purpose District). C2-8 district.

2019-73-BZ

115 Broadway, Block 2471, Lot(s) 0013, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit the construction of a six-story plus mezzanine mixed-use building containing ground floor commercial use and residential units on the upper floors contrary to ZR §23-32 (minimum lot area for residences); ZRs §§35-31 and 23-153 (maximum floor area ratio for Quality Housing building); ZRs §§35-31 and 33-122 (maximum total floor area ratio for mixed use building); and ZRs §§35-652 and 23-662 (maximum base height, maximum total height, and required setbacks for mixed use building). C4-3 zoning district. C4-3 district.

2019-74-BZ

112-51 Northern Boulevard, Block 1707, Lot(s) 8, Borough of **Queens, Community Board: 3**. Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-4/R6 zoning district. R6/C2-4 district.

DOCKETS

2019-75-BZ

704 Broadway, Block 00545, Lot(s) 7502, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Bright Horizons Child Care Center) to be located on the first floor, mezzanine and cellar of an existing eight story building contrary to ZR §42-10. M1-5B NoHo Historic District. M1-5B district.

2019-76-BZ

1973 East 16th Street, Block 7295, Lot(s) 0058, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the legalization and enlargement of an existing residence contrary to ZR §§23-461(a) & 23-48 (side yard) and ZR §23-47 (rear yard). R5 zoning district. R5 district.

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

CALENDAR

REGULAR MEETING APRIL 30, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 30, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

197-02-BZ

APPLICANT – Eric Palatnik, P.C., for Nostrand Kings Management, LLC, owner.
SUBJECT – Application January 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Harbor Fitness) which expired on November 26, 2017; Waiver of the Board’s Rules. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 2825 Nostrand Avenue, Block 7692, Lot 38, Borough of Brooklyn.
COMMUNITY BOARD #18BK

49-12-BZ

APPLICANT – Powerhouse Gym “FLB” Inc., for Laterra, Inc., owner; Powerhouse Gym “FLB” Inc., lessee.
SUBJECT – Application August 8, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Powerhouse Gym) in a portion of an existing one-story commercial building which expired on June 12, 2017; Waiver of the Rules. C2-2R5B zoning district.
PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, Block 6077, Lot 1, Borough of Queens.
COMMUNITY BOARD #11Q

REGULAR MEETING APRIL 30, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 30, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-140-BZ

APPLICANT – Eric Palatnik, P.C., for Cohancy Realty LLC, owner.
SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service

Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.
PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M. for postponed hearing.

2018-149-BZ

APPLICANT – Alfonse Duarte for Q.S.A.C. Inc., owner.
SUBJECT – Application September 17, 2018 – Special Permit (§73-621) to permit a one-story extension to a one family dwelling contrary to ZR §23-142) (Floor Area Ratio). R3-1 zoning district.
PREMISES AFFECTED – 230-48 146th Avenue, Block 13465, Lot 35, Borough of Queens.
COMMUNITY BOARD #13Q

2018-164-BZ

APPLICANT – Pryor Cashman LLP, for Franchise Realty Interstate Corp., owner.
SUBJECT – Application October 17, 2018 – Special Permit (§73-243) to permit the legalization of an accessory drive-through to an eating and drinking establishment (UG 6) (*McDonald’s*) contrary to ZR §32-15. C1-2/R4 zoning district.
PREMISES AFFECTED – 72-71 Kissena Boulevard, Block 6805, Lot 45, Borough of Queens.
COMMUNITY BOARD #8Q

2018-200-BZ

APPLICANT – Victor Han Architect P.C., for Robert C. Quinlan, owner; Renzo Gracie, lessee.
SUBJECT – Application December 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Renzo Gracie Upper West Side – Mixed Martial Arts Studio) located at the sub-cellar level of a 7-story mixed use building contrary to ZR §32-10. C4-6A Upper West Side/Central Park West Historic District.
PREMISES AFFECTED – 100 West 72nd Street, Block 1143, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #7M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 9, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

410-68-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for GNB Auto Repair, Inc., owner; Alessandro Bartellino, lessee.

SUBJECT – Application May 3, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 26, 2018. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term to a previously granted variance that permitted the operation of an automotive service station and accessory automotive repair, which expired on November 26, 2018; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2019, and then to decision on that same date; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application on the following conditions: the station be kept free of debris and graffiti; the station provide full service from 8:00 a.m. to 6:00 p.m. and assistance for seniors and the disabled daily; automobiles be prohibited from parking on the sidewalk and streets; all equipment and debris obstructing access to the parking area for cars awaiting service be removed; and, the repair and restoration of the 85th Street and 24th Avenue curb cut to conform to approved plans; and

WHEREAS, the subject site is bound by Astoria Boulevard to the south, 85th Street to the west, and 24th Avenue to the north, in an R3-2 (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 107 feet of frontage along Astoria Boulevard, 148 feet of frontage along 85th Street, 100 feet of frontage along 24th Avenue, 16,711 square feet of lot area and is occupied by a one- (1) story automotive service station with accessory convenience store, three (3) multiple product dispenser (“MPD”) pumps and 15 parking spaces for vehicles awaiting service; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1953, when, under BSA Cal. No. 676-53-BZ, the Board granted a variance to permit the erection and maintenance of a gasoline service station with auto wash, lubritorium, motor vehicle repairs, storage, sale of accessories, and office, for a term of 15 years, to expire February 24, 1968, on condition that the plot be leveled substantially to the grade of the surrounding streets and be arranged as designed and as indicated on plans filed with the application; along the rear lot line in place of the steel fence proposed, there be erected a masonry wall not less than five (5) feet six (6) inches in height; complete working drawings be submitted to the Board for further consideration; such plans be filed within two (2) months, by April 24, 1953, and after approval, all permits be obtained and all work completed within one (1) year, by February 24, 1954; and

WHEREAS, on May 11, 1954, under BSA Cal. No. 676-53-BZ, the Board amended the resolution to approve new plans as being in substantial compliance with the requirements of the resolution adopted on February 24, 1953, on condition that all the work as indicated on such working drawings be complied with; the pumps be of an approved low type and be erected as shown not nearer than 15 feet to either street building line; the planting be maintained with suitable material in the areas where shown, properly protected with concrete curbing; signs be restricted to a permanent sign attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs, but permitting the erection of one (1) post standard only near the intersection for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not over four (4) feet; and, in all other respects the resolution be complied with; and

WHEREAS, on May 7, 1957, under BSA Cal. No. 676-53-BZ, the Board further amended the resolution to permit the number of gasoline storage tanks to be a total of 12 such approved tanks, as passed on by the Borough Superintendent under Misc. App. 265/57, denied April 1, 1957, as shown on plans filed with the application; and

WHEREAS, on November 26, 1968, under the subject calendar number, the Board, pursuant to ZR § 11-412, permitted a one- (1) story enlargement to the accessory building of the existing automotive service station and extended the term of the variance for ten (10) years, to expire on November 26, 1978, on condition that all work substantially conform to drawings filed with the application; the plan be amended to delete the tire rack shown along the

MINUTES

easterly lot line north of Astoria Boulevard; no trucks be parked; signs be restricted to those shown on the drawings; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by November 26, 1969; and

WHEREAS, on July 24, 1974, under the subject calendar number, the Board reopened to reflect an amendment to the location of the gasoline pumps; and

WHEREAS, on October 24, 1978, under the subject calendar number, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on November 26, 1988, on condition that other than as amended the resolution be complied with; and, a new certificate of occupancy be obtained within one (1) year, by October 24, 1979; and

WHEREAS, on April 3, 1990, under the subject calendar number, the Board waived its Rules of Procedure, reopened and further amended the resolution to extend the term for ten (10) years, to expire on November 26, 1998; to permit the existing kiosk to remain on the gasoline pump island fronting on Astoria Boulevard and to legalize the elimination of the gasoline pump island and two (2) pumps fronting on 85th Street, substantially as shown on revised drawings filed with the application, on condition that the landscaping be maintained and replaced when necessary; all signs comply with the C1 district regulations; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 3, 1991; and

WHEREAS, on February 29, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to permit the erection of a new 24-foot x 34-foot metal canopy over the existing concrete pump island with two (2) MPDs, on condition that the term of the variance be limited to ten (10) years from November 26, 1998, to expire on November 26, 2008; no vehicles be parked on the sidewalks; there be no dead storage on the premises; no outdoor work be performed on the premises; the canopy lighting not exceed the limits of the approved BSA drawings and all lighting be directed down and away from the residential uses; the landscaping be maintained in accordance with the BSA-approved drawings; the signs be in compliance with the BSA-approved drawings; the premises be maintained clean of graffiti and debris and in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by March 1, 2001; and

WHEREAS, on January 11, 2005, under the subject calendar number, the Board reopened and further amended the resolution to permit the conversion of a portion of the existing automotive service station to a convenience store, an addition to the existing building to contain two (2) automotive service repair bays, a service attendant area and

a customer waiting area, an extension of the existing canopy, the relocation of the pump islands, and the addition of one (1) new fuel dispenser, on condition that all work substantially conform to drawings filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; all lighting be directed downward and away from adjacent residential uses; the hours of operation of the automotive repairs be limited to Monday through Saturday, 8:00 a.m. to 6:00 p.m.; the above conditions appear on the certificate of occupancy; all curb cuts and landscaping be installed and/or maintained as shown on the BSA-approved plans; the curb cut on 24th Avenue be eliminated; all conditions from prior resolutions not specifically waived by the Board remain in effect; a new certificate of occupancy be obtained within one (1) year, by January 11, 2006; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configurations(s) not related to the relief granted; and

WHEREAS, on April 11, 2006, under the subject calendar number the Board reopened and further amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of two (2) years, to expire on January 11, 2008, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configurations(s) not related to the relief granted; and

WHEREAS, on June 11, 2013, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to extend the term for ten (10) years, to expire on November 26, 2018, on condition that all use and operations substantially conform to drawings filed with the application; the site be maintained free of debris and graffiti; motor vehicle sales not take place at the site; signage comply with C1 district regulations; the above conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by June 11, 2014; all conditions from the prior resolution not specifically waived by the Board remain in effect; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configurations(s) not related to the relief granted; and

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

MINUTES

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the amount of signage present on the site, the presence of vehicles parking illegally on the sidewalk and the installation and maintenance of landscaping on the site; and

WHEREAS, in response, the applicant demonstrated the removal of such sign and represented that no vehicles visiting the subject site park on the sidewalk; and

WHEREAS, at hearing, the Board, in recognition of the general good condition and maintenance of the site, permitted the applicant to install landscaping on the site immediately after the Board grant on this application; and

WHEREAS, by letter dated January 23, 2019, the Fire Department states that a review of their records indicates that the subject automotive service station is current with its Fire Department permits with respect to the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system, and that the Fire Department has no objection to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated November 26, 1968, as amended through June 11, 2013, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “March 27, 2019”-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 26, 2028;

THAT landscaping shall be installed, as shown on the BSA-approved plans, and shall be maintained and replaced as necessary to maintain in first-class condition;

THAT all lighting shall be directed downward and away from adjacent residential uses;

THAT the hours of operation of the automotive repairs shall be limited to Monday through Saturday, 8:00 a.m. to 6:00 p.m.;

THAT all curb cuts shall be maintained as shown on the BSA-approved plans;

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

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

THAT motor vehicle sales shall not take place at the site;

THAT signage shall comply with C1 district regulations;

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

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

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 410-68-BZ”) shall be obtained within one (1) year, by April 9, 2020; 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, April 9, 2019.

279-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Bacele Realty Corp., owner.

SUBJECT – Application January 4, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of a bank (UG 6) in a residential zoning district, contrary to §22-00 which expired on January 28, 2018; Waiver of the Board’s Rules. R4/R5B zoning districts.

PREMISES AFFECTED – 27-24 College Point Boulevard, Block 4292, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the construction of a two- (2) story commercial building to be occupied as a bank and expired on January 28, 2018; and

WHEREAS, a public hearing was held on this application on April 9, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the subject site is located on the southwest corner of College Point Boulevard and 28th Avenue, partially within an R5B zoning district and partially within an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 66 feet of frontage along College Point Boulevard, 131 feet of frontage along 28th Avenue, 5,765 square feet of lot area (3,919 square feet within the R5B district and 1,845 square feet within the R4 district), and is vacant; and

WHEREAS, the Board has exercised jurisdiction over

MINUTES

the subject site January 28, 2014, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a two- (2) story commercial building to be occupied as a bank (Use Group 6) with five (5) accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; the bulk parameters of the building be as follows: two (2) stories; a maximum floor area of 5,082 square feet (0.88 floor area ratio ("FAR")); a maximum height of 26'-10"; a maximum lot coverage of 2,541 square feet; and five (5) accessory parking spaces; the building be used as a bank; any change in use of the building be subject to the Board's approval; landscaping and fencing be in accordance with the BSA-approved plans; signage comply with C1 district regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s); substantial construction proceed in accordance with ZR § 72-23, by January 28, 2018; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(c)(2) of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant submits that the commencement of construction at the site, which is a build-out for a bank tenant, has been delayed due to the loss of a prospective tenant for the subject site; and

WHEREAS, at hearing, the Board raised concerns regarding the status of the environmental cleanup and remediation of the site and the closure of underground storage tanks at the site; and

WHEREAS, in response, the applicant submitted a site history detailing the remediation efforts from 1998 to January 2013, as well as a spill closure letter from the New York State Department of Environmental Conservation ("NYSDEC") (NYSDEC Spill Case 9913926), dated July 8, 2013, further stating that any existing monitoring wells associated with the spill case be properly closed in accordance with the Department's document, *CP-43: Groundwater Monitoring Well Decommissioning Policy*, and in the event the property is redeveloped, any contaminated subsurface materials encountered during construction activities be properly handled in accordance with all applicable laws and regulations, and appropriate remedial and vapor mitigation measures be taken to prevent potential vapor intrusion from affecting any site

development, to ensure human health and safety; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* § 1-07.3(c)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated January 28, 2014, so that as further amended this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to January 28, 2022, *on condition*:

THAT substantial construction shall be completed, pursuant to ZR § 72-23, by January 28, 2022, as evidenced by an inspection and determination by the Department of Buildings;

THAT the bulk parameters of the building shall be as follows: two (2) stories; a maximum floor area of 5,082 square feet (0.88 floor area ratio ("FAR")); a maximum height of 26'-10"; a maximum lot coverage of 2,541 square feet; and five (5) accessory parking spaces;

THAT the building be shall used as a bank;

THAT any change in use of the building shall be subject to the Board's approval;

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

THAT signage shall comply with C1 district regulations;

THAT any existing monitoring wells associated with the spill case be properly closed in accordance with the New York State Department of Environmental Conservation's document, *CP-43: Groundwater Monitoring Well Decommissioning Policy*;

THAT any contaminated subsurface materials encountered during construction activities be properly handled in accordance with all applicable laws and regulations, and appropriate remedial and vapor mitigation measures be taken to prevent potential vapor intrusion from affecting any site development, to ensure human health and safety;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 279-12-BZ") shall be obtained within four (4) years, by January 28, 2022;

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

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

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

MINUTES

9, 2019.

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board’s Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.

SUBJECT – Application January 8, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home which expires on January 30, 2019. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for postponed hearing.

277-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation, owner.

SUBJECT – Application June 18, 2018 – Amendment of a previously approved Variance (§72-21) to permit a proposed development of a 12-story, 125-unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). The Amendment seeks an additional twenty (20) affordable dwelling units and an additional partial floor for tenant storage: Extension of Time to Complete Construction which expires on August 19, 2018. R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, Block 2170, Lot(s) 180, 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

MINUTES

ZONING CALENDAR

2016-4171-BZ

CEQR #16-BSA-109K

APPLICANT – Sheldon Lobel, P.C., for Jisel Cruz, owner.
SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the development of a three-story plus penthouse residential building (UG 2) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 823 Kent Avenue, Block 1898, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 18, 2016, acting on New Building Application No. 321131422, reads in pertinent part:

“Proposed new 3-family residential building . . . is not allowed pursuant to ZR 42-10”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a four-story residential building that does not comply with zoning regulations for use, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, with continued hearings on August 21, 2018, September 27, 2018, December 11, 2018, March 5, 2019, and then to decision on April 9, 2019; and

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

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application of this application; and

WHEREAS, the subject site is located on the east side of Kent Avenue, between Myrtle Avenue and Park Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 25 feet of frontage along Kent Avenue, 206 feet of depth, 5,154 square feet of lot area and is occupied by a two-story residential building at the rear of the site with 1,276 square feet of floor area (0.25 FAR); and

WHEREAS, the applicant proposes to develop a four-story, including penthouse, residential building with a total of 3,636 square feet of floor area (0.71 FAR), including 1,105 square feet of floor area at the first three floors and 321 square feet of floor area for the fourth-floor penthouse—totaling 4,912 square feet of residential floor area (0.95 FAR) at the subject site; and

WHEREAS, the applicant submits that, at the subject

site, residential use is not allowed under ZR § 42-10; and

WHEREAS, the applicant states that the following are unique physical conditions about the subject site that create practical difficulties in developing the site in strict conformance with applicable zoning regulations: the subject site’s narrowness and its history of development that has resulted in its current configuration with a small, non-conforming residential building to the rear; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that no other sites have a comparable depth to width ratio with as-of-right uses; and

WHEREAS, the applicant notes that, historically, the front of the subject site was occupied by a residential building that was demolished while under the City’s ownership, resulting in the subject site’s current configuration; and

WHEREAS, the applicant states that the current configuration of the subject site presents a disruption of the uniform street wall on the subject block, a condition present at only one other lot in the vicinity; and

WHEREAS, the applicant notes that the subject site presents physical constraints for an as-of-right development occupied by conforming commercial or manufacturing uses with a total of 3,878 square feet of floor area (0.75 FAR); and

WHEREAS, more particularly, the applicant notes that an as-of-right development would be confined to the front of the subject site and could only cover a portion of the subject site’s street frontage because of the presence of the existing residential building at the rear of the subject site and further exacerbated by the subject site’s narrowness; and

WHEREAS, the applicant also notes that the 25-foot width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floorplates to support a commercial or manufacturing use; and

WHEREAS, the applicant accordingly submits that an as-of-right development would consist of a three-story, with cellar, warehouse with a 20-foot-tall first floor (to provide access to the rear of the subject site) and a cantilevered second floor (to maximize its floorplate) and that, although there are a number of properties in the area with both residential and commercial or manufacturing uses, none of them are located at the middle of a block with the as-of-right use directly in front of the residential use; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that the above unique physical conditions eliminate any reasonable possibility that strictly complying with applicable regulations would enable a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a three-story

MINUTES

warehouse and office building with the existing residential building to remain at the rear of the subject site—would result in a substantial loss on investment but that the proposed development of a four-story, including penthouse, residential building with the existing residential building to remain at the rear of the subject site would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed residential development will not alter the character of the surrounding neighborhood or district; and

WHEREAS, in support of this contention, the applicant submitted evidence that the surrounding area contains a vibrant mix of uses—including non-conforming residences and manufacturing uses—and that only a few lots on the subject block are developed with conforming commercial, manufacturing or community-facility uses; and

WHEREAS, the applicant also submits that, with a building height of 38'-6", the proposed residential development is consistent with the surrounding area, and the applicant provided a photographic streetscape montage indicating that buildings in the vicinity range in height from 16 feet to 86 feet, that the proposed height is consistent with adjacent residential buildings, that the proposed building will improve street wall continuity on the subject block and that the proposed floor area, which is below the maximum allowed for community facilities as of right, is consistent with the surrounding area; and

WHEREAS, by letter dated October 15, 2018, the Fire Department states that it has no objection to this application provided that the existing two-story frame building shall be fully sprinklered; that any future structures constructed on the remaining portion of the subject site shall be fully sprinklered; that the 8-foot side yard shall be maintained clear at all times; that there shall be no parking at any time within the length of the side yard; that a separate address sign shall be installed on or near the front lot line indicating the address of the rear residential building; and that the rear residential building shall install a security system connected to a company that provides continuous supervision to monitor heat, smoke, carbon monoxide and sprinkler flow; and

WHEREAS, in response to questions from the Board at hearing, the applicant addressed that the height of the proposed development is consistent with adjacent residences and the surrounding area, clarified that the roof terrace will only be accessible to the third-floor with penthouse duplex apartment and submitted a draft restrictive declaration to address the Fire Department's concerns regarding access to the rear of the subject site; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or

development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence that, although the subject site and adjacent Tax Lot 22 were held in common ownership by the City as well a housing development fund corporation at one time, the safety-mandated demolition of the former residential building at the front of the subject site occurred during the period when the City owned the subject site, and the above unique physical conditions that cause practical difficulties or unnecessary hardship were not caused by the current owner or any predecessor in title; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA109K, dated March 22, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated November 13, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts with respect to archaeological or architectural resources; and

WHEREAS, by letter dated February 12, 2019, the New York City Department of Environmental Protection ("DEP") states that the January 2019 Remedial Action Plan ("RAP") and the January 2019 Construction Health and Safety Plan are acceptable on condition that proper handling, transportation and disposal of excavated materials from the site shall be conducted in accordance with applicable New York State Department of Environmental Conservation ("NYSDEC") regulations; that the proposed vapor barrier system shall be used unless an amendment to the January 2019 RAP is approved by DEP; and that at the

MINUTES

completion of the project, a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements have been properly implemented (that is, proper transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill and top soil requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.); and

WHEREAS, by letter dated March 12, 2019, DEP states that the proposed project would not result in any potential for significant adverse impacts with regard to air quality and that the proposed project would not result in any potential for significant adverse impacts with regard to noise on condition that a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades and that an alternate means of ventilation shall be required and shall be incorporated into the building design and construction; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-1 zoning district, the development of a four-story residential building that does not comply with zoning regulations for use, contrary to ZR § 42-10; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received April 9, 2019”-Seventeen (17) sheets; and *on further condition*:

THAT a restrictive declaration shall be recorded against the property prior to the issuance of any building permit substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this day of , 2019, is entered into by JISEL CRUZ (the “Declarant”), who resides at 823 Kent Avenue, Brooklyn, New York 11205;

WHEREAS, the Declarant is the fee owner of

certain land located in the City and State of New York, Borough of Brooklyn, being known and designated as Block 1898, Lot 23 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Premises is currently improved with a 2-story single-family frame dwelling at the rear of the tax lot (the “Existing Building”);

WHEREAS, the Declarant has requested by application assigned BSA Calendar Number 2016-4171-BZ, that the New York City Board of Standards and Appeals (the “Board”) grant a variance application pursuant to Section 72-21 of the New York City Zoning Resolution (“ZR”) to permit the development of a new three-story residential building (the “Proposed Building”) at the Premises contrary to use regulations (the “Variance Application”); and

WHEREAS, the Fire Department of the City of New York (the “FDNY”) issued a Letter of No Further Objection dated October 15, 2018 annexed hereto as Exhibit B, noting that the FDNY has no further objections to the Variance Application contingent on the following requirements and conditions: (1) the existing 2-story frame building must be fully sprinklered; (2) any future structures on the remaining portion of the lot must be fully sprinklered, (3) the 8-foot side yard located to the west of the Proposed Building (the “Driveway”) shall be maintained clear at all times and that there shall be no parking anytime within the length of the side yard; (4) a separate address sign shall be installed on or near the front lot line indicating the address of the rear building; and (5) the rear building will install a security system that connects to a company that provides continuous supervision that will monitor heat, smoke, carbon monoxide, and sprinkler flow; and

WHEREAS, the FDNY further requests that a “No Parking Anytime” sign be installed in the side yard permanently, before, during, and after construction; and

WHEREAS, the Board held a public hearing on December 11, 2018 and at that hearing, the Board requested that the FDNY conditions listed in the above-referenced October 15, 2018 letter be recorded in a Restrictive Declaration against the Premises; and

WHEREAS, the Board further requires that the Declarant install a domestic waterline sourced sprinkler system in the Existing Building prior to construction of the Proposed Building;

WHEREAS, the Board and FDNY instructed the Declarant to record the proposed construction

MINUTES

safety measures, as illustrated in the diagram as annexed hereto as Exhibit C; and

WHEREAS, the Board and FDNY noted that the Driveway must be gated and used exclusively as a means of egress of the Existing Building; and

WHEREAS, the Board requires Declarant to execute and record in the Office of the City Register of the City of New York this restrictive declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Variance Application, the Declarant hereby declares that the Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. That during construction of the Proposed Building, the Declarant will erect a temporary construction fence on the Premises with emergency egress gates as further described and illustrated in Exhibit C;
2. That prior to issuance of permits for new construction of the Proposed Building, the Declarant will install a sprinkler system in in the Existing Building that uses the existing domestic waterline as a water source;
3. The Proposed Building will be fully sprinklered in accordance with DOB and FDNY requirements;
4. After a sprinkler system is installed in the Proposed Building, the Existing Building will connect to and source water from the Proposed Building's sprinkler system;
5. That any additional building built on the Premises must fully be sprinklered in accordance with DOB and FDNY requirements;
6. The Declarant will provide a permanent FDNY accessible gate at the front lot abutting the Driveway, as further illustrated in Exhibit C;
7. The Driveway shall remain clear and unobstructed at all times;
8. That a "No Parking Anytime" sign be installed in the side yard permanently, before, during, and after construction;
9. A separate address sign shall be installed on or near the front lot line indicating the address of the Existing Building;
10. That a security system connected to a company that provides continuous supervision monitoring heat, smoke, carbon monoxide and sprinkler flow will be installed in the Existing Building.
11. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
12. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
13. In the event that the existing tax lot is subdivided, this Declaration must be recorded against the newly subdivided lot and the covenants set forth herein shall run with that land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns;
14. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including but not limited to, the Variance; and
15. In the event that the Declarant: (1) elects to relinquish the Variance Application, (2) the variance lapses and the Declarant's ability to renew the Variance Application expires, or (3) provisions in the ZR change so that both the Existing Building and the Proposed Building may exist as-of-right or (4) the Existing Building is demolished, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

THAT the fence located outside of the property line shall be removed prior to the issuance of any building permit;

THAT the existing two-story frame building shall be fully sprinklered; that any future structures constructed on the remaining portion of the subject site shall be fully sprinklered; that the 8-foot side yard shall be maintained clear at all times; that there shall be no parking at any time within the length of the side yard; that a separate address sign shall be installed on or near the front lot line indicating the address of the rear residential building; and that the rear residential building shall install a security system connected to a company that provides continuous supervision to monitor heat, smoke, carbon monoxide and sprinkler flow;

THAT a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades,

MINUTES

and an alternate means of ventilation shall be required and shall be incorporated into the building design and construction;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2016-4171-BZ”), shall be obtained within four (4) years, by April 9, 2023;

THAT proper handling, transportation and disposal of excavated materials from the site shall be conducted in accordance with applicable New York State Department of Environmental Conservation regulations; that the proposed vapor barrier system shall be used unless an amendment to the January 2019 RAP is approved by DEP; and that at the completion of the project, a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements have been properly implemented (that is, proper transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill and top soil requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.);

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 9, 2019.

2017-131-BZ

CEQR #17-BSA-115K

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – Variance (§72-21) to permit the construction of a mixed residential and community facility (*Congregation Divrei Yoel*) contrary to ZR §23-153 (Maximum Lot Coverage) and ZR §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266, Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 18, 2018, acting on New Building Application No. 321504813, reads in pertinent part:

The proposed building is contrary to maximum lot coverage pursuant to ZR Section 23153, required rear yard pursuant to ZR Section 2436 and 2347, and Rear Yard Obstruction pursuant to 2433(b)(3); and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R7A zoning district, the development of a seven-story, with cellar, mixed-use residential and community-facility building for use as a house of worship in the cellar through third floors that does not comply with zoning regulations for lot coverage, rear yards, and rear yard obstructions, contrary to ZR §§ 23-153, 24-36, 23-47 and 24-33; and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, with continued hearings on September 13, 2018, December 4, 2018, February 12, 2019, and then to decision on April 9, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

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

WHEREAS, residents of the surrounding area submitted testimony in support of this application; and

WHEREAS, the subject site is located on the north side of Gerry Street, between Harrison Avenue and Throop Avenue, in an R7A zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 115 feet of frontage along Gerry Street, 100 feet of depth, 11,500 square feet of lot area and is partially vacant (Tax Lot 49) and occupied by three four-story two-family residential buildings (Tax Lots 46, 47 and 48); and

WHEREAS, the applicant proposes to develop, on Tax Lot 49, a seven-story, with cellar, mixed-use residential and community-facility building for use as a house of worship in the cellar through third floors with 10,844 square feet of community-facility floor area (0.94 FAR), lot coverage of 80 percent, a rear yard with depths of 0 feet for three floors and between 30 feet and 35 feet above the third floor, and an obstruction of the rear yard with a height of two stories and 30 feet; and

WHEREAS, the applicant represents that, at the subject site, lot coverage may not exceed 65 percent under ZR § 23-153, rear yards must have a minimum depth of 30 feet under ZR §§ 24-36 and 23-47 and obstruction of the

MINUTES

rear yard by a portion of a building used for community-facility use may not have a height exceeding one story or 23 feet above curb level under ZR § 24-33; and

WHEREAS, the Board acknowledges that the subject house of worship, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

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

WHEREAS, consistent with ZR § 72-21, the applicant submits that the proposed building is necessary to accommodate the programmatic needs of the subject house of worship and submitted a programmatic needs study demonstrating the following: the subject house of worship requires space to support the subject house of worship's current membership of approximately 212 families with a projected growth rate of 5 percent per year, resulting in a membership of approximately 400 people to be served by the subject house of worship; adequate spaces are necessary for multiple, concurrent daily prayer services that are easily accessible; the provision of two sets of worship and study spaces; space necessary for prayer and lecture; an accessory bath; and location within walking distance of members' residences; and

WHEREAS, the applicant notes that the proposed house of worship contains prayer rooms on the first floor because many members use the accessory bath in the cellar on a daily basis prior to attending prayer sessions, and locating the prayer rooms above the first floor would create difficulties in circulation because members would enter the house of worship at the first floor, descend the stairs into the cellar to use the accessory bath only to then climb multiple flights of stairs to use prayer rooms before ultimately exiting back on the first floor; and

WHEREAS, the applicant notes that an as-of-right development would not meet the programmatic needs of the subject house of worship because the main hall at the first floor would displace prayer rooms, thereby creating the above circulation difficulties and eliminating adjacencies crucial to the programmatic needs of the subject house of worship; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the programmatic needs of the subject house of worship create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the subject house of worship is a non-profit organization, this

application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variances requested are necessary to accommodate the programmatic needs of the subject house of worship with adequate space and facilities; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that the building to the rear of the subject site rises to a height of 65 feet with a rear yard depth of 30 feet; that the 7 feet in height, above the 23 feet of height permitted as of right, to the rear of the proposed building would have minimal impact on light and air to adjacent properties; and that, above the third floor, the proposed building has rear yard depths between 30 feet and 35 feet; and

WHEREAS, the applicant further submitted a lot coverage study, demonstrating that there are a number other buildings in the vicinity with full lot coverage; and

WHEREAS, in response to questions from the Board at hearing, the applicant clarified that the elevator will use a locking system to ensure appropriate separation between the subject house of worship and residences in the proposed building along with a locked door at the cellar level to be used only in the event of an emergency; and

WHEREAS, with respect to building materials, the applicant amended the drawings to reflect that the proposed building will use actual brick masonry, not the thin-brick system originally proposed; and

WHEREAS, the Board notes that no determination herein is made with respect to compliance of the proposed building at the fourth floor and above with respect to street wall setback and dormer regulations under ZR §§ 23-621 and 23-622, and DOB must ensure that the proposed building at the fourth floor and above complies with all applicable regulations; and

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

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of programmatic needs of the subject house of worship; and

WHEREAS, in response to questions from the Board with respect to the size and location of spaces within the proposed building, the applicant submitted detailed

MINUTES

schedules for each space demonstrating full utilization based on the programmatic needs of the subject house of worship; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA115K, received March 20, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by letter dated March 7, 2017, the New York City Office of Environmental Remediation (“OER”) issues a Notice of Satisfaction, stating that the subject site has satisfied the Hazardous Materials and Air Quality (E) designation (No. E-238) requirements, that OER has no objection to the issuance of a certificate of occupancy and that the January 2017 Site Management Plan has been developed for the subject site to ensure long-term management of Engineering and Institutional Controls at the subject site with the (E) designation (No. E-238) for Hazardous Materials and Air Quality continuing to be administered by OER; and

WHEREAS, by correspondence dated March 22, 2019, the New York City Department of City Planning’s Waterfront and Open Space Division represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and that this action is consistent with WRP policies; and

WHEREAS, by correspondence dated July 2, 2018, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts on architectural or archeological resources; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards

and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R7A zoning district, the development of a seven-story, with cellar, mixed-use residential and community-facility building for use as a house of worship in the cellar through third floors that does not comply with zoning regulations for lot coverage, rear yards, and rear yard obstructions, contrary to ZR §§ 23-153, 24-36, 23-47 and 24-33; on condition that all work, operations and site conditions shall conform to drawings filed with this application marked “Received April 9, 2019”-Sixteen (16) sheets; and on further condition:

THAT the bulk parameters of the building shall be as follows: maximum lot coverage of 80 percent, a rear yard with a minimum depth of 0 feet for two stories and obstruction of the rear yard with a height of two stories and a maximum of 30 feet, as illustrated on the Board-approved drawings;

THAT neither Exterior Insulation and Finish System nor face brick shall be used for the façade of the building and only actual brick masonry shall be used, as indicated on the Board-approved drawings;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-131-BZ”), shall be obtained within four (4) years, by April 9, 2023;

THAT the Department of Buildings must ensure compliance of the proposed building at the fourth floor and above with respect to street wall setback and dormer regulations under ZR §§ 23-621 and 23-622 as well as all other applicable zoning provisions;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 9, 2019.

MINUTES

2018-38-BZ

CEQR #18-BSA-110R

APPLICANT – Eric Palatnik, P.C., for Joseph LaForgia, owner.

SUBJECT – Application March 15, 2018 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility contrary to ZR §32-15. C1-2/R1-2 zoning district.

PREMISES AFFECTED – 1717 Richmond Road, Block 887, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated February 13, 2018, acting on Department of Buildings (“DOB”) New Building Application No. 520325648, reads in pertinent part:

Eating and drinking establishments with a drive-up window in C1 zoning districts are contrary to the provisions of ZR 32-15 and must be referred to the Board of Standards and Appeals for review; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03 to permit, in an R1-2 (C1-2) zoning district, the operation of an eating or drinking establishment with accessory drive-through facilities, contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the north side of Richmond Road, between Seaver Avenue and Dongan Hills Avenue, in an R1-2 (C1-2) zoning district, on Staten Island; and

WHEREAS, the subject site has approximately 299 feet of frontage along Richmond Road, a depth that varies between 96 feet at the southern side lot line and 97 feet at the northern side lot line, 29,650 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over tax lots 7 and 3 since November 26, 1968, when, under BSA Cal. No. 541-68-BZ, the Board granted a variance to permit the reconstruction of an automotive service station with accessory uses on condition that all work substantially conform to drawings filed with the application; the signs conform to the provisions for a C1 district; the post sign be

non-rotating and street trees be planted along Richmond Road, in accordance with the rules and regulations of the Department of Parks; the variance be for a term of ten (10) years, to expire November 26, 1978; all other laws, rules and regulations be complied with; and, substantial construction be completed within one (1) year, by November 26, 1969; and

WHEREAS, on May 13, 1969, under BSA Cal. No. 541-68-BZ, the Board reopened and amended the resolution on condition that the automotive service station substantially conform to revised drawings of proposed conditions filed with the application; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on November 25, 1969, under BSA Cal. No. 541-68-BZ, the Board reopened and further amended the resolution to extend the time to complete construction for one (1) year, by November 26, 1970; and

WHEREAS, on July 11, 1978, under BSA Cal. No. 541-68-BZ, the Board reopened and further amended the resolution to extend the term of the variance for ten (10) years, to expire on November 26, 1988, on condition that the sidewalk and curbs be repaired where required; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 11, 1979; and

WHEREAS, on November 27, 1979, under BSA Cal. No. 541-68-BZ, the Board reopened and further amended the resolution to extend the time to obtain a certificate of occupancy for one (1) year, by November 27, 1980; and

WHEREAS, on January 17, 1989, under BSA Cal. No. 541-68-BZ, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on November 26, 1998, on condition that the premises conform to revised drawing of present conditions and proposed conditions filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by January 17, 1990; and

WHEREAS, on April 9, 1991, under BSA Cal. No. 541-68-BZ, the Board reopened and further amended the resolution to permit a change in the design and arrangement of the existing automotive service station; a change of the existing multiple product dispenser pumps to self-serve pumps; the installation of a fire suppression system, mounted on each existing light standard and the alteration of the existing sales and office area of the accessory building to accommodate an attendant’s booth, substantially as shown on revised drawings of proposed conditions filed with the application, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year, by April 9, 1992; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 17, 2000, under BSA Cal. No. 541-68-BZ, the Board waived its Rules of Practice and

MINUTES

Procedure, reopened and further amended the resolution to extend the term for ten (10) years, to expire on November 26, 2008, on condition that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 17, 2001; and

WHEREAS, ZR § 73-243 provides:

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide outdoor table service) with *accessory* drive-through facilities for a term not to exceed five years, provided that the following findings are made:

- (a) the drive-through facility contains reservoir space for not less than 10 automobiles;
- (b) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity;
- (c) the eating or drinking place with *accessory* drive-through facility fully complies with the *accessory* off-street parking regulations for the indicated zoning district, including provision of the required number of *accessory* off-street parking spaces for the indicated zoning district (for the purpose of this finding, the waiver provisions of Sections 36-231 and 36-232 shall be inapplicable);
- (d) the character of the commercially zoned *street* frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing *commercial uses* contained within such area and to the subject eating or drinking place (excluding the *accessory* drive-through facility portion);
- (e) the drive-through facility shall not have an undue adverse impact on *residences* within the immediate vicinity of the subject premises; and
- (f) there will be adequate buffering between the drive-through facility and adjacent *residential uses*.

In connection therewith, the Board may modify the requirement of Section 32-411 insofar as it relates to the *accessory* drive-through facility. The Board may prescribe additional appropriate

conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant states that the proposed eating or drinking establishment will utilize a parking lot, utilized in tandem with the retail establishment located on adjacent tax lots 43 and 41 on tax block 883, containing 37 off-street parking spaces designed for safe maneuvering and that the drive-through lane provides space for the queueing of a minimum of 10 vehicles without interfering with parking; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than 10 automobiles; and

WHEREAS, the applicant represents that the subject site layout, including one (1) exit-only curb cut and one (1) entrance/exit curb cut, ensures the least potential to create traffic on Richmond Road or the adjacent roadway network, a concern of the Community Board, the drive-through facility will cause minimal interference with the flow of traffic; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; and

WHEREAS, the applicant states that the proposed commercial building contains approximately 1,988 square feet of floor area, which, pursuant to ZR § 32-20, requires seven (7) off-street parking spaces, and that 372 off-street parking spaces are proposed (seven (7) accessory off-street parking spaces designated for the proposed eating and drinking establishment and 30 accessory off-street parking spaces designated for the adjacent retail building); and

WHEREAS, accordingly, the Board finds that the proposed eating or drinking place with accessory drive-through facility fully complies with the required number of

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

2 Block 883, Lot 41 contains an existing retail building containing 9,137 square feet of floor area and an off-street parking requirement of 30 spaces.

MINUTES

accessory off-street parking spaces for the indicated zoning district; and

WHEREAS, the applicant states that the subject site fronts on Richmond Road, an 80-foot wide street with commercial uses located to the north and south of the subject site with C1-2 and C1-1 overlays and the proposed eating and drinking establishment is specifically located on and adjacent to busy streets to attract motorists already on the roadway, will attract a large portion of its trips from the traffic passing the site and will not add new traffic to the adjacent roadway system; and

WHEREAS, accordingly, the Board finds that the character of the commercially zoned street frontage within 500 feet of the subject site reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing commercial uses contained within such area and to the subject eating or drinking place (excluding the accessory drive-through facility portion); and

WHEREAS, the applicant represents that the subject site will be lighted to ensure zero (0) light levels on the residential properties located to the rear of the subject site; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject site; and

WHEREAS, the applicant states that the nearest residential use is approximately 41'-3" from the proposed menu board at the subject site and that safeguards are proposed to minimize any adverse effects on the character of the surrounding area; and

WHEREAS, specifically, the applicant proposes to provide a 17'-1.25" high, one- (1) foot thick, concrete retaining wall along the rear lot line shared with residential properties, planted with cascading vine for its entire length, and proposes to install landscaping around the eating and drinking establishment and planting strips along Richmond Road and in the parking lot with evergreen shrubs and ground cover; and

WHEREAS, accordingly, the Board finds that there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant states that the proposed hours of operation for the eating and drinking establishment and drive-thru facility are daily from 5:30 a.m. to 9:00 p.m., and that deliveries will be made before the facilities open or after they close; and

WHEREAS, over the course of hearings, the Board raised concerns with respect to the circulation and maneuverability of the parking lot in connection with the queuing of vehicles for the drive-thru, as well as the storage of trash from the eating and drinking establishment; and

WHEREAS, in response, the applicant reoriented the parking spaces and modified the maneuverability, including the use of bollards and signage to aid in the proper circulation of the site, and also represented that the subject

site will store its trash within the proposed building, in a refrigerated room, until it is collected; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-110R, dated March 22, 2019; and

WHEREAS, in light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-243 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to *permit*, in an R1-2 (C1-2) zoning district, the operation of an eating or drinking establishment with an accessory drive-through facility, contrary to ZR § 32-15; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "April 9, 2019"-Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five (5) years, expiring April 9, 2024;

THAT trash shall be stored in an interior air-conditioned space inside the eating and drinking establishment building;

THAT landscaping shall be installed, maintained and replaced as necessary, as per plans, to maintain a first-class condition;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-38-BZ") shall be obtained within four (4) years, by April 9, 2023;

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

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

THAT DOB must 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.

MINUTES

Adopted by the Board of Standards and Appeals, April 9, 2019.

2018-118-BZ

CEQR #18-BSA-0112K

APPLICANT – Law Office of Lyra J. Altman, for Abdo Chakkalo and Norma Chakkalo, owners.

SUBJECT – Application July 13, 2018– Special Permit (§73-622) to permit the enlargement of an existing one family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space) and ZR § 23-47 (rear yard). R4 Special Ocean Parkway district.

PREMISES AFFECTED – 710 Avenue W, Block 7184, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 24, 2018, acting on Department of Buildings (“DOB”) Application No. 321628057, reads in pertinent part:

The proposed enlargement of the existing one family residence in an R4 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-142 of the Zoning Resolution;
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-142 of the Zoning Resolution;
3. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution;
4. Creates non-compliance with respect to the open space by not meeting the minimum requirements of Section 23-142 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the enlargement of a semi-detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, open space and rear yards contrary to ZR §§ 23-142 and 23-47; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of

the site and surrounding neighborhood; and

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the south side of Avenue W, between East 7th Street and Coney Island Avenue, in an R4 zoning district and in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 33 feet of frontage on Avenue W, 100 feet of depth, 3,300 square feet of lot area, and is occupied by a two- (2) story plus cellar single-family semi-detached dwelling containing 2,472 square feet of floor area (0.75 FAR), 38 percent lot coverage (1,250 square feet), 62 percent of open space (2,050 square feet), a front yard with a depth of 10’-0.25”, a rear yard with a depth of 33’-11.75”, and one (1) side yard with a width of 10’; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;

- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a semi-detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by both vertically and horizontally extending the dwelling into the rear yard and constructing a masonry shed in the rear yard, resulting in a two- (2) story plus attic and cellar dwelling and rear shed with 4,048 square feet of floor area (1.23 FAR), 51 percent of lot coverage (1,687 square feet), 49 percent of open space (1,613 square feet), a front yard with a depth of 10'-0.25", a rear yard with a depth of 20 feet, and one (1) side yard with a width of 10 feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,250 square feet of floor area to 1,567 square feet of floor area, the second floor from 1,222 square feet of floor area to 1,585 square feet of floor area, create an attic with 776 square feet of floor area, and create a masonry shed

with 120 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.75 is permitted, a maximum of 45 percent lot coverage is permitted, a minimum of 55 percent open space is required, and a rear yard with a minimum depth of 30 feet are required pursuant to ZR §§ 23-142 and 23-47; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises within an R4 zoning district (the "Study Area") concluding that, of the 126 qualifying residences, 96 residences (76 percent) have an FAR of greater than 0.75, ranging from 0.77 to 1.58, and 22 residences (18 percent) have an FAR of 1.23 or greater; and

WHEREAS, with regards to lot coverage and open space, the applicant demonstrated that, within the Study Area, 53 residences (42 percent) have greater than 45 percent of lot coverage, ranging from 46 percent to 67 percent, and 21 residences (17 percent) have 51 percent of lot coverage or greater; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 32 other single- or two- (2) family dwellings located on interior lots, 11 lots (34 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 20 feet to 27, including the dwelling located adjacent to the subject site, which has a rear yard with a depth of 20 feet; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-0112K, dated July 18, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R4 zoning district, the enlargement of a one- (1) family semi-detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot

MINUTES

coverage, open space and rear yards, contrary to ZR §§ 23-142 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “March 25, 2019”-Eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.23 (4,048 square feet of total floor area consisting of 3,928 square feet of floor area in the dwelling and 120 square feet of floor area in the masonry shed located in the rear yard), a maximum of 51 percent lot coverage (1,687 square feet), a minimum of 49 percent open space (1,613 square feet) and a rear yard with a minimum depth of 20 feet at all floors as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-118-BZ”) shall be obtained within four (4) years, by April 9, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 2019.

2018-155-BZ

CEQR #19-BSA-039K

APPLICANT – Jay Goldstein, Esq., for Moishe Loketch, owner.

SUBJECT – Application October 9, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461(A) (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 1123 East 27th Street, Block 7627, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 7, 2018, acting on DOB Application No. 321383864, reads in pertinent part:

1. ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%;
2. ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed Open Space Ratio (OSR) is less than the required 150%;
3. ZR 23-461(a): Proposed plans are contrary to ZR 23-461(A) in that the proposed Side Yards are less than the required 5’-0” and 8’-0”;
4. ZR 23-47: Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”; and

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

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2019, and then to decision on that date; and

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

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

WHEREAS, the subject site is located on the east side of East 27th Street, between Avenue K and Avenue L, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage on East 27th Street, 100 feet of depth, 4,000 square feet of lot area, and is occupied by a two- (2) story plus cellar single-family detached dwelling containing 2,566 square feet of floor area (0.64 FAR), an open space ratio of 1.02 (2,626 square feet of open space), a front yard with a depth of ten (10) feet, two (2) side yards with widths of 3’-4” and ten (10) feet, and a rear yard with a depth of 30’-5”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards

to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by both vertically and horizontally extending the dwelling along the side yards and into the rear yard, resulting in a three- (3) story plus cellar dwelling with 3,810 square feet of floor area (0.95 FAR), an open space ratio of 0.62 (2,363 square feet of open space), a front yard with a depth of ten (10) feet, two (2) side yards with widths of 3'-4" and ten (10) feet, and a rear yard with a depth of 24 feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,374 square feet to 1,637 square feet, the second floor from 1,192 square feet to 1,430 square feet, and create a third floor with 744 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.5 is required, two (2) side yards, each five (5) feet in width and 13 feet of total side yard are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying 3'-4" side yard and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying northern side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 112 qualifying residences, 94 residences (84 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.13, and 16 residences (14 percent) have an FAR of 0.95 or greater; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 42 other single- or two- (2) family dwellings located on interior lots, 17 lots (41 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 14 feet to 29, including the dwellings located immediately adjacent to and to the rear of the subject site, which all have a rear yards with a depth of 20 feet and two of which (the lot immediately north of the subject site and the lot to the rear of the subject site) also have detached garages located in the rear yard; and

MINUTES

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-039K, dated October 11, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one- (1) family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “April 9, 2019”-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.95 (3,810 square feet of floor area), a minimum open space ratio of 0.62 (2,363 square feet of open space) two (2) side yards with minimum widths of 3’-4” and ten (10) feet, and a rear yard with a minimum depth of 24 feet at all stories, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-155-BZ”) shall be obtained within four (4) years, by April 9, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 2019.

1-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3rd and 4th floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

56-02-BZ

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

MINUTES

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned hearing.

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for adjourned hearing.

2017-56-BZ

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

SUBJECT – Application February 24, 2017 – Variance (§72-21) to permit construction of a cellar and three (3) story residential condominium with six (6) dwelling units and ten (10) off-street parking spaces contrary to ZR §22-11 (multi-family buildings not permitted in an R1-2 zoning district; ZR §§ 23-00 & 25-00) no bulk or parking regulations for multi-family buildings. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

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

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

2017-244-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

2018-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jackie Cohen-Arazi, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1249 East 23rd Street, Block 7641, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – Special Permit (§73-622) for the enlargement of an existing single family-home contrary to floor area, open space and lot coverage (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 9, 2019
1:00 P.M.**

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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

ZONING CALENDAR

2018-103-BZ

CEQR #18-BSA-146K

APPLICANT – Law Office of Lyra J. Altman, for Jacqueline Mosseri and Alan Mosseri, owners.

SUBJECT – Application Jun2 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to ZR §23-47 (less than the required rear yard). R5 (Special Ocean Parkway) and R5 (Special Ocean Parkway Sub-district).

PREMISES AFFECTED – 936 Avenue R, Block 6685, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 22, 2018, acting on Department of Buildings (“DOB”) Application No. 321438654, reads in pertinent part:

1. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R5 zoning district, within the Special Ocean Parkway District and partially within the Special Ocean Parkway Subdistrict, the enlargement of a detached single-family dwelling that does not comply with the zoning requirements for rear yards contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on April 9, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

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

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

WHEREAS, the Board was in receipt of two (2) form letter in support of, and one (1) form letter in opposition to, this application; and

WHEREAS, the subject site is located on the south side

MINUTES

of Avenue R, between East 9th Street and Coney Island Avenue, in an R5 zoning district, within the Special Ocean Parkway District and partially within the Special Ocean Parkway Subdistrict, in Brooklyn; and

WHEREAS, the site has approximately 36 feet of frontage on Avenue R, 95 feet of depth, 3,420 square feet of lot area, and is occupied by a two (2) story plus cellar single-family detached dwelling containing 1,862 square feet of floor area (0.54 FAR), a front yard with a depth of 16'-5", two (2) side yards with widths of 7'-10.25" and 8'-0.25", and a rear yard with a depth of 24'-0.5"; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;

- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and

- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by horizontally extending the dwelling into the eastern side yard, front yard and rear yard, resulting in a two-(2) story plus cellar dwelling with 2,357 square feet of floor area (0.69 FAR), a front yard with a depth of ten (10) feet two (2) side yards with widths of five (5) feet and 8'-0.25", and a rear yard with a depth of 20 feet at the first floor; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 949 square feet to 1,444 square feet, but no enlargement of the second floor will occur; and

WHEREAS, the applicant proposes no enlargement at the second floor, but provided a 1929 Sanborn fire insurance map of the subject site and immediate area demonstrating the occupation of the subject site with a residence in substantially the same location and orientation as the site is occupied today and, thus, that the existing rear yard predates the enactment of the Zoning Resolution and is a lawful non-compliance; and

WHEREAS, at the subject site, a rear yard with a minimum depth of 30 feet is required pursuant to ZR § 23-47; and

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 20 other single- or two- (2) family dwellings located on interior lots, 7 lots (35 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 0 feet to 21 feet, including the dwellings located immediately to the west and east of the subject site which have rear yards with depths of 11 feet and seven (7) feet, respectively; and

WHEREAS, at hearing, the Board expressed concern regarding the retention of existing floor joists, citing that the proposal retains only 43.3 percent of the floor joists on the first floor; and

WHEREAS, however, in this instance, the Board explained that, because 100 percent of the floor joists are being retained in their existing locations on the second floor, where no enlargement is proposed, the retention of an average of 72 percent of the existing building's floor joists across the two (2) existing floors was deemed appropriate in this application; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA146K, dated June 28, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R5 zoning district, within the Special Ocean Parkway District and partially within the Special Ocean Parkway Subdistrict, the enlargement of a single-family detached dwelling that does not comply with the zoning requirements with regards to rear yards, contrary to ZR § 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "February 5, 2019"-Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

building: a rear yard with a minimum depth of 20 feet at the first floor, as illustrated on BSA-approved plans;

THAT all floor joists on the second floor shall be retained in location, as indicated on the BSA-approved plans;

THAT there shall be no enlargement of the second floor;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-103-BZ") shall be obtained within four (4) years, by April 9, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 2019.

2018-152-BZ

CEQR #19-BSA-037M

APPLICANT – Law Office of Fredrick A. Becker, for MC 71 Fifth Avenue Realty LLC, owner; WRII, LLC dab The Well, lessee.

SUBJECT – Application September 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Well*) to be located in portions of the cellar and first floor of an existing eleven story commercial building contrary to ZR §32-10. C6-4M Ladies Mile Historic District.

PREMISES AFFECTED – 2 East 15th Street aka 71 Fifth Avenue, Block 842, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 5, 2018, acting on Department of Buildings ("DOB") Application No. 123476014, reads in pertinent part:

The proposed Physical Culture Establishment in

MINUTES

zoning district C6-4M and C6-2A is not a permitted use, as of right. A Special Permit is required from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C6-4M zoning district and partially within a C6-2A zoning district, in the Ladies' Mile Historic District, a physical culture establishment ("PCE") on portions of the cellar level and first floor of an existing 11-story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 9, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the subject site is located on the southeast corner of East 15th Street and Fifth Avenue, partially within a C6-4M zoning district and partially within a C6-2A zoning district, in the Ladies' Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 150 feet of frontage along East 15th Street, 77 feet of frontage along Fifth Avenue, 12,261 square feet of lot area and is occupied by an existing 11-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racquetball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the proposed PCE will occupy 7,582 square feet of floor space in portions of the cellar with men's and women's locker rooms with toilets and showers, a co-ed steam room and sauna, spaces for meditation and fitness, exam and consultation rooms, treatment rooms, and spaces for storage, laundry and mechanical equipment; and 4,752 square feet of floor area on portions of the first floor with spaces for yoga and massage, a library, lounge, café, restrooms and employee pantry; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the PCE is proposed to operate as “The Well,” operating daily from 5:30 a.m. to 12:00 a.m.; and

WHEREAS, the applicant states that the PCE will be located entirely below commercial uses in the subject building, and there will be very limited, if any, use of weights, mostly handheld barbells of lower weight in connection with personal training; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be consistent with the character of the neighborhood, anticipates to draw a majority of its clientele from the immediate vicinity, who will walk or use mass transit to access the site; and

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

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics, and facilities for the practice of massage by New York State licensed massage therapists; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will pose no potential hazards because the facility will be located within an existing structure, mostly within the cellar; and

WHEREAS, the applicant states that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—will be installed within the proposed PCE space; and

WHEREAS, by letter dated March 29 2019, the Fire Department states that a public assembly application is not required for the proposed PCE and confirms that the premises are protected by a sprinkler, standpipe and fire alarm systems that have been inspected and tested satisfactory to Fire Department standards; that an alteration type II (123556473) application has been filed for modification of the fire alarm system in the PCE space; that the Department will assist the applicant for plan approval after the Board has rendered a decision on this application and the Department has no objection to the subject application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by

the community; and

WHEREAS, the applicant submits that, by New York City Landmarks Preservation Commission (“LPC”) Certificate of No Effect (CNE-19-35702), issued March 19, 2019, LPC permitted alterations to the subject building in connection with the proposed PCE, including the installation of one (1) white finished metal bracket sign with black lettering (“W”, “The Well”) on a black finished metal armature at a masonry pier at the first floor of the north (East 15th Street) façade; and white vinyl lettering and logos at four (4) display windows, one (1) entryway transom, and entryway door at the first floor of the north façade; and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19BSA037M, dated September 27, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on portions of the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C6-4M zoning district and partially within a C6-2A zoning district, in the Ladies’ Mile Historic District, the operation of a proposed physical culture establishment on the cellar level and first floor of an existing 11-story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 15, 2018”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 9, 2029;

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

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

MINUTES

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-152-BZ”), shall be obtained within four (4) years, by April 9, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 2019.

2017-142-BZ

APPLICANT – Alexander Levkovich, Esq., for George Greene, owner; Iglesia Misioneras De Evangelzcion De Jovanes Cristianos, lessees.

SUBJECT – Application May 5, 2017 – Variance (§72-21) to permit the construction of a House of Worship (Use Group 4A) (*Congregation Iglesia Misioneras De Evangelzacion De Jovanes Cristianos*) contrary to ZR §23-153 (Floor area), ZR §24-11 (Open Space and Lot Coverage), ZR §24-47 (Rear Yard). R6 (Special Ocean Parkway District).

PREMISES AFFECTED – 3000 Coney Island Avenue, Block 7264, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Off-Calendar.

Carlo Costanza, Executive Director

BULLETIN

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DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|--------------------------------|-----|
| DOCKET | 319 |
| CALENDAR of May 7, 2019 | |
| Morning | 320 |
| Afternoon | 321 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, April 23, 2019**

Morning Calendar322

Affecting Calendar Numbers:

| | |
|---------------------------|---|
| 122-07-BZ | 1630 East 15 th Street, Brooklyn |
| 231-14-BZ | 124 West 23 rd Street, Manhattan |
| 159-00-BZ | 383 3 rd Avenue, Brooklyn |
| 246-01-BZ | 35-11 Prince Street, Queens |
| 218-58-BZ | 77-40 Hewlett Street, Queens |
| 222-90-BZ | 80-02 Kew Gardens Road, Queens |
| 208-03-BZ | 2555 Shell Road, Brooklyn |
| 132-04-BZ | 310 East Houston Street, Manhattan |
| 183-09-BZ | 1400 Fifth Avenue, Manhattan |
| 238-15-A thru 243-15-A | 102-04, 08, 12, 16, 20, 24 Dunton Court, Queens |
| 2017-310-A | 10002 Farragut Road, Brooklyn |
| 2019-45-A | 10002 Farragut Road, Brooklyn |
| 2016-4265-BZ | 25 Bleecker Street, Manhattan |
| 2018-117-BZ | 2060 63 rd Street, Brooklyn |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 2017-20-BZ | 550 5 th Avenue, Brooklyn |
| 2017-34-BZ | 311 Adams Avenue, Staten Island |
| 2018-8-BZ | 1820 Cropsey Avenue, Brooklyn |
| 2018-52-BZ | 159 Boerum Street, Brooklyn |
| 2018-53-BZ | 104 DeGraw Street, Brooklyn |
| 2018-55-BZ | 222 Johnson Avenue, Brooklyn |
| 2018-64-BZ & 2018-65-A | 725 Mobile Road, Queens |
| 2018-95-BZ | 120 Avenue M, Brooklyn |

Afternoon Calendar339

Affecting Calendar Numbers:

| | |
|-------------|--|
| 2018-174-BZ | 1440 3 rd Avenue, Manhattan |
| 2018-182-BZ | 220-05 Hillside Avenue, Queens |
| 2019-8-BZ | 3000 Jerome Avenue, Bronx |
| 2017-265-BZ | 318-320 54 th Street, aka 5401 3 rd Avenue, Brooklyn |
| 2018-34-BZ | 102-02 Metropolitan Avenue, Queens |

DOCKETS

New Case Filed Up to April 23, 2019

2019-77-BZ

1134 Fulton Street, Block 2017, Lot(s) 8, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) to be located within the first and cellar floors of a proposed cellar and ten-story mixed-use building contrary to ZR §32-10. C2-4/R7D zoning district. district.

2019-78-BZ

135-25 Northern Boulevard, Block 4958, Lot(s) 0055, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to allow the reduction of required parking for ambulatory diagnostic or treatment facility (Use Group 4) (Parking Category PRC B1). C2-2/R6 zoning district. C2-2/R6 district.

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

CALENDAR

REGULAR MEETING MAY 7, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 7, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

316-73-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application November 27, 2018 – Extension of Term of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which is set to expire on January 8, 2019. R4 zoning district.

PREMISES AFFECTED – 31-02 68th Street, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application March 6, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a three-story community facility building occupied as a house of worship (UG 4) which expired on May 6, 2018; Waiver of the Board's Rules. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

118-14-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Mangone Developers Corp., owner.

SUBJECT – Application March 28, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a three (3) story, sixteen (16) unit condominium building contrary to use regulations which expired on March 3, 2019. R1-2, R3X-NA-1 zoning district.

PREMISES AFFECTED – 1891 Richmond Road, Block 895, Lot(s) 61, 63, 65, 67, Borough of Staten Island.

COMMUNITY BOARD #5SI

APPEALS CALENDAR

162-15-A thru 164-15-A

APPLICANT – Akerman LLP, for 144 Jamaica Inc., owner.

SUBJECT – Application July 19, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved common law vested rights application which permitted the development of the proposed residential building at the premises which expired on May 17, 2018.

R5 zoning district

PREMISES AFFECTED – 139-48 88th Road, 88-30/34 144th Street, Block 9683, Lot(s) 13, (Tent. 14, 114), Borough of Queens.

COMMUNITY BOARD #12Q

165-15-A & 166-15-A

APPLICANT – Akerman LLP, for 144 Jamaica Inc., owner.

SUBJECT – Application July 19, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved common law vested rights application which permitted the development of the proposed residential building at the premises which expired on May 17, 2018.

R5 zoning district.

PREMISES AFFECTED – 88-36/38 144th Street, Block 9683, Lot(s) 15 (Tent. 15 and 16), Borough of Queens.

COMMUNITY BOARD #12Q

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building's Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

2018-125-A

APPLICANT – Cesare Giaquinto, for 495 Wild Ave, LLC, owner.

SUBJECT – Application July 30, 2018 – Proposed construction of a two-story commercial building for vehicle storage on the ground floor and accessory offices on the second floor not fronting a legally mapped street contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 495 Wild Avenue, Block 2705, Lot(s) 49, 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

REGULAR MEETING MAY 7, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 7, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-261-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.
SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11(Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.
PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

2018-136-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.
SUBJECT – Application August 17, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. C8-1/R2A zoning district.
PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108, 80, Borough of Queens.

COMMUNITY BOARD #13Q

2018-137-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.
SUBJECT – Application August 17, 2018 – Special Permit (§73-19) to permit the operation of a daycare (*Children of America*) contrary to ZR §32-10. C8-1 zoning district.
PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108,80, Borough of Queens.

COMMUNITY BOARD #13Q

2018-145-BZ

APPLICANT – Akerman, LLP, for Jericho Holdings LLC, owner; 251 Jericho Turnpike Fitness Group, LLC, lessee.
SUBJECT – Application September 7, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) to be located on portions of the first and second floors of a new building contrary to ZR §32-10. C8-1 Zoning District.
PREMISES AFFECTED – 251-73 Jericho Turnpike, Block 8668, Lot 108, Borough of Queens.

COMMUNITY BOARD #13Q

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.
SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.
PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 23, 2019
10:00 A.M.**

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

SPECIAL ORDER CALENDARS

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NG Kingswood Center, LLC, owner; TSI Midwood LLC dba New York Sports Club, lessee.

SUBJECT – Application February 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) on portions of the first and second floors of a three-story commercial building which expired on August 1, 2017; Waiver of the Board’s Rules. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, Block 6777, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension to the term of the special permit for a physical culture establishment (“PCE”), previously granted pursuant to ZR § 73-36, which expired on August 1, 2017, and the amendment of the same; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 23, 2019, and then to decision on that same date; and

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

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

WHEREAS, the subject site is bound by East 15th Street to the east, East 14th Street to the west, between Avenue P and Kings Highway, in a C4-4A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 240 feet of frontage along East 15th Street, 240 feet of non-continuous frontage on East 14th Street, 200 feet of depth, 47,200 square feet of lot area and is occupied by a three- (3) story commercial building; and

WHEREAS, the subject PCE is located within portions of the first floor (15,500 square feet of floor area) and second floor (2,500 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 5, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize a PCE on the first floor and second floor of an existing three- (3) story commercial building, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on August 1, 2017; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by the Department of Buildings (“DOB”); fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit; and

WHEREAS, the applicant represents that no changes to the operator (New York Sports Club) of the PCE have occurred or are proposed, and that massage services are no longer provided at the PCE; and

WHEREAS, the applicant also requests an amendment to reflect a change in the hours of operation of the PCE to the following: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; Saturday, 8:00 a.m. to 11:00 p.m.; and Sunday, 7:30 a.m. to 8:00 p.m.; and

WHEREAS, by letter dated February 25, 2019, the Fire Department states that the Fire Department Bureau’s Licensed Public Place of Assembly (“LPPA”) unit

1 At the time of the initial Board grant, the subject site was located on Block 6777, Lots 17 and 24, partially within a C4-4A zoning district and partially within an R5B zoning district. The applicant represents that the tax lots have since been merged into tax lot 17 and, pursuant to New York City Department of City Planning zoning map amendment application C100232ZMK, effective April 6, 2011, the subject site is completely located within a C4-4A zoning district.

MINUTES

performed an inspection on November 8, 2018 and one (1) violation order was issued requiring the removal of locking devices from the front main exits; that the fire alarm and sprinkler systems were inspected and tested satisfactory to Fire Department standards; and the Fire Department has no objection to the Board rendering a decision on this application as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that an extension of term of the special permit and the subject amendment to reflect new hours of operation of the PCE are appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated February 5, 2008, so that, as amended, this portion of the resolution reads: “to permit an extension of term of the special permit, to expire on August 1, 2027, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘March 28, 2019’-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 1, 2027;

THAT the hours of operation shall be limited to the following: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; Saturday, 8:00 a.m. to 11:00 p.m.; and Sunday, 7:30 a.m. to 8:00 p.m.;

THAT all signage on the site shall comply with all applicable provisions of the Zoning Resolution;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a new certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 122-07-BZ”) shall be obtained within one (1) year, by April 23, 2020;

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

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

DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, April 23, 2019.

231-14-BZ

APPLICANT – Bryan Cave Leighton Paisner, for Orangetheory Fitness, owner; OTF Man One LLC c/o dba Orange Theory Fitness, lessee.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Orangetheory Fitness) within a portion of an existing commercial building which expired on April 12, 2018. C6-3X zoning district.

PREMISES AFFECTED – 124 West 23rd Street, Block 798, Lot 7507, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension to the term of a special permit for a physical culture establishment (“PCE”), previously granted by the Board pursuant to ZR § 73-36, which expired on April 12, 2018; and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with continued hearings on December 4, 2018, February 26, 2019, and April 23, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, recommends disapproval of this application unless the residents of the condominiums residing above the facility state in writing that treadmill and music noise from the gym no longer disturbs them; and

WHEREAS, the Board was in receipt of three (3) letters from residents of the subject building and received testimony at the public hearings from the president of the subject building’s condominium board in opposition to the application raising concerns regarding noise disturbances associated with the operation of the PCE; and

WHEREAS, the subject site is located on the south

MINUTES

side of West 23rd Street, between Seventh Avenue and Avenue of the Americas, in C6-3X zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 23rd Street, 99 feet of depth, 4,937 square feet of lot area, and is occupied by an existing 16-story plus cellar mixed-use residential and commercial building; and

WHEREAS, the subject PCE occupies 3,646 square feet of floor area on the first floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 2016, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize an existing PCE on the first floor of the subject premises, on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant expire on April 12, 2018; there be no complaints about the PCE from neighbors at the time of the hearing for renewal of the grant; when the application for renewal of the subject special permit be substantially complete, the applicant provide affected property owners with the hearing notice and related forms pursuant to Board Rule of Practice and Procedure §§ 1-05.6 and 1-05.7; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; exit pathways with a minimum width of 3'-0" be provided leading to the required exits and such pathways be maintained unobstructed, including from any gymnasium equipment; an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection to an FDNY approved central station—be installed in the entire PCE space; Local Law 58/87 be complied with as approved by the Department of Buildings ("DOB"); an automatic wet sprinkler system be installed in the entire space as per DOB approval; all partitions and exits be as approved by DOB; full "box in box" acoustically isolated construction with double-rocked spring isolated ceiling, resiliently isolated double-rocked walls, and a two- (2) inch thick isolated concrete floor with 3/4-inch rubber gym finish floor on one- (1) inch thick rollout isolation mat (in the gym, except not in the weight section), and five- (5) inch thick acoustical rubber foam matting (in the weight section of the gym) be installed; all wall and ceiling cavities be filled with mineral fiber insulation; sound-absorptive treatment (three- (3) inch spray cellulose) be applied to the ceilings to control sound inside the gym area; electronic limiters be installed on sound equipment to ensure that music does not exceed preset levels; the conditions appear on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all relevant agencies by April 12, 2020; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all of the applicable

provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there has been no change in ownership or operation and that the subject PCE continues to operate as Orangetheory Fitness, operating daily from 5:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm to an FDNY-approved central station—are maintained throughout the PCE space; and

WHEREAS, by letter dated September 26, 2018, the Fire Department submitted a letter of no objection stating that applications have been filed with the DOB for the fire alarm system, fire suppression systems and place of assembly; and that a review of Fire Department records indicated that all FDNY permits for the fire alarm system and fire suppression systems are current; and

WHEREAS, the applicant represented that the PCE has received several noise complaints from neighbors since the April 2016 grant, and PCE ownership has and continues to work with the neighbors to address any noise complaints; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the disturbances to the building tenants resulting from the operation of the PCE and requested that the tenants log their noise complaints and notify the PCE and coordinate with them to view PCE security camera footage if and when they experience any such disturbances; and

WHEREAS, the applicant engaged a sound consultant and provided the Board with evidence of acoustic testing, occurring on January 24, 2019, and March 21, 2019, of the PCE's impact on the neighbor's apartments; and

WHEREAS, at the April 23, 2019 hearing, the president of the subject building's condominium board represented that the PCE made improvements thus reducing the disturbances caused by the PCE; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, in light of the concerns raised by the Community Board and building tenants, the Board, accordingly, finds that a five (5) year, rather than ten (10) year, extension of the term of the special permit is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated April 12, 2016, so that, as amended, this portion of the resolution reads: "to grant an extension term for five (5) years, to expire on April 12, 2023, *on condition*:"

MINUTES

THAT the term of this grant shall expire on April 12, 2023;

THAT the PCE operator shall set up and maintain a protocol with the subject building's condominium board to keep track of noise complaints received and mitigation measures taken in response;

THAT measures shall be taken to mitigate any disturbances created by the operation of the PCE;

THAT there shall be no complaints about the PCE from neighbors at the time of the hearing for renewal of the grant;

THAT when the application for renewal of the subject special permit is substantially complete, the applicant shall provide affected property owners with the hearing notice and related forms pursuant to Board Rule of Practice and Procedure §§ 1-05.6 and 1-05.7;

THAT exit pathways with a minimum width of 3'-0" shall be provided leading to the required exits and such pathways be maintained unobstructed, including from any gymnasium equipment;

THAT an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection to an FDNY approved central station—shall be maintained in the entire PCE space;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings ("DOB");

THAT an automatic wet sprinkler system shall be maintained in the entire space as per DOB approval; all partitions and exits be as approved by DOB;

THAT full "box in box" acoustically isolated construction with double-rocked spring isolated ceiling, resiliently isolated double-rocked walls, and a two- (2) inch thick isolated concrete floor with 3/4-inch rubber gym finish floor on one- (1) inch thick rollout isolation mat (in the gym, except not in the weight section), and five- (5) inch thick acoustical rubber foam matting (in the weight section of the gym) shall be maintained;

THAT all wall and ceiling cavities shall be filled with mineral fiber insulation;

THAT sound-absorptive treatment (three- (3) inch spray cellulose) shall be maintained on the ceilings to control sound inside the gym area;

THAT electronic limiters be maintained on sound equipment to ensure that music does not exceed preset levels;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 231-14-BZ") shall be obtained within one (1) year, by April 23, 2020;

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

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

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

Adopted by the Board of Standards and Appeals, April 23, 2019.

159-00-BZ

APPLICANT – Eric Palatnik, P.C., for Al-Iman Center, Inc., owner.

SUBJECT – Application September 21, 2015 – Extension of Term & Amendment (72-01): extension of term of a previously granted variance of a Use Group 3 school and an Amendment for elimination of the term of the variance and a change and minor plumbing and portion alterations. C8-2 zoning district.

PREMISES AFFECTED – 383 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated August 21, 2015, reads in pertinent part:

“Proposed extension of term and minor amendments are contrary to BSA Calendar Number 159-00-BZ and therefore must be referred to the NYC Board of Standards and Appeals”; and

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board, and an amendment to legalize existing conditions at the subject site; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, with continued hearings on September 26, 2017, October 11, 2018, December 4, 2018, and January 29, 2019, and then to decision on April 23, 2019; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application on condition that the applicant remove an existing DOB violation for failure to obtain a certificate of occupancy; and

WHEREAS, the subject site is located on the east side of Third Avenue, between 3rd Street and 5th Street, in a C8-2 zoning district, in Brooklyn; and

MINUTES

WHEREAS, the site has approximately 132 feet of frontage along Third Avenue, 114 feet of depth, 12,743 square feet of lot area and is occupied by a five-story, with cellar, community-facility used as a school; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2000, when, under the subject calendar number, the Board granted a variance to permit a building formerly used for heavy timber to be used as a school for a term of ten (10) years, expiring December 12, 2010, on condition that the hours of operation of the school shall be limited to 8:00 a.m. to 3:00 p.m., Monday through Friday, for students and until 5:00 p.m. for teachers and staff; and that, to facilitate the movement of school buses, emergency vehicles and other vehicles on 3rd Avenue from 6th Street to 3rd Street, a “no parking 7:00 a.m.–4:00 p.m. school days” sign shall be posted in front of the proposed main entrance to the school; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension and an amendment to legalize existing conditions, including the addition of a staircase, minor partition alterations, the addition of a cellar under the one-story portion of the building and an extension of the hours of operation from 8:00 a.m. to 3:00 p.m. to 7:30 a.m. to 5:00 p.m.; and

WHEREAS, additionally, the applicant requests a waiver of Section 1-07.3(3)(ii) of the Board’s Rules of Practice and Procedure to allow the late filing of this application and submits that the school use has been continuous since the expiration of the term and substantial prejudice would occur without such waiver because it would result in the termination of a school that has operated at the subject site for more than a decade; and

WHEREAS, the applicant submits that the subject school has expanded its enrollment from 600 students to 800 students, which is a permitted occupancy that was accounted for as projected growth in constructing the subject school; that accordingly expanded hours of operation are necessary; and that there are 31 classrooms in the subject building; and

WHEREAS, in response to questions from the Board, the applicant clarified that this application no longer proposes to enlarge the subject site to include an adjacent property and that the adjacent property will instead be used as a Use Group 4 playground, which is permitted as of right and which the subject school will be allowed to use pursuant to a revocable consent; and

WHEREAS, the applicant also clarified the operation of the subject school, noting the following: five school buses arrive in 5–15 minute intervals between 7:00 a.m. and 7:45 a.m. and between 3:00 p.m. and 3:30 p.m.; school administrators oversee drop offs and pickups in an orderly manner through the use of wireless telecommunication devices; the subject site accommodates 800 students, 110 staff members, 31 classrooms, recreational space in the rear yard, an auditorium and a lunch room, three after-school programs with additional after-school functions; and

WHEREAS, the applicant submitted evidence that a refrigerated trash enclosure has been installed in the cellar of

the building and that a cage around the subject building’s exit door has been removed and replaced with a hand railing; and

WHEREAS, the applicant submits that this application is necessary in order to obtain a certificate of occupancy and that there are two places of assembly, located in the cellar and on the fifth floor; and

WHEREAS, the applicant submits that the outstanding violation referenced by the community board will be addressed by obtaining a certificate of occupancy upon approval of this application; and

WHEREAS, by letter dated April 18, 2019, the Fire Department states that it has no objection to this application on condition that the applicant shall cure outstanding violation orders regarding maintenance of a required fire alarm system and exist doors free of locks, regarding obtaining a Place of Assembly Certificate of Operation and regarding legalizing the existing altered fire extinguishing system for the commercial cooking equipment and exhaust system; and

WHEREAS, by letter dated April 19, 2019, the Fire Department states that plans for an altered fire extinguishing system protecting the commercial cooking equipment and exhaust system have been approved and that an authorized contractor may submit a request to the Fire Department for an acceptance test to be witnessed by a Range Hood Unit representative; and

WHEREAS, lastly, the applicant proposes to eliminate the term of the variance; and

WHEREAS, however, at hearing, the Board expressed concerns with the applicant’s representations about compliance with the conditions of the Board’s grant and accordingly finds that a five (5) year term is more appropriate, given the history of the subject site; and

WHEREAS, the Board notes that, if the applicant proceeds to comply with conditions of the Board’s grant, including obtaining a certificate of occupancy as noted by the community board, a longer term may be appropriate at a future time; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board’s Rules of Practice and Procedure, extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Board’s Rules of Practice and Procedure *reopen* and *amend* the resolution, dated December 12, 2000, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of five (5) years, expiring April 23, 2024, and to *legalize* the existing conditions at the subject site; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 3, 2019”-Ten (10) sheets; and *on further condition*:

THAT the term of the variance shall be limited to five (5) years, expiring April 23, 2024;

THAT the Department and Building and the Fire

MINUTES

Department shall inspect and review the compliance of the building and drawings to ensure compliance with the Building Code and Fire Code;

THAT the hours of operation of the school shall be limited to 7:30 a.m. to 5:00 p.m., Monday through Friday;

THAT to facilitate the movement of school buses, emergency vehicles and other vehicles on 3rd Avenue from 6th Street to 3rd Street, a “no parking 7:00 a.m.–4:00 p.m. school days” sign shall be posted and maintained in front of the proposed main entrance to the school;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 159-00-BZ”), shall be obtained within one (1) year, by April 23, 2020;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, April 23, 2019.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application June 15, 2018 – Extension of Term of a previously approved Special Permit (73-36) which permitted the operation of a Physical Cultural Establishment (Bodhi Fitness Center) which expired on June 1, 2018; Amendment to permit the enlargement of the establishment by 4,037.41 square feet. C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension to the term of the special permit for a physical culture establishment (“PCE”), previously granted pursuant to ZR § 73-36, which expired on June 1, 2018, and the amendment of the same; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the subject site is an irregular site with frontage on Prince Street and 35th Avenue, partially within an M1-1 zoning district and partially within an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 130 feet of non-continuous frontage along Prince Street, 74 feet of frontage along 35th Avenue, 27,624 square feet of lot area and is occupied by a one- (1) story plus cellar commercial building; and

WHEREAS, the subject PCE is located within a portion of the first floor (17,318 square feet of floor area) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 11, 2002, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, containing 8,962 square feet of floor area, on the first floor of the subject building on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; a sign be posted within the PCE stating that no children under the age of eighteen (18) be permitted; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; accessory parking in the cellar be provided and maintained for 16 cars with an entrance from 35th Avenue with clearly visible signs to be posted, identifying spaces designated for PCE members only; fire protection measures, including a wet sprinkler and smoke detection system connected to a Fire Department-approved central station, be maintained in accordance with the BSA-approved plans; the special permit be limited to a term of ten (10) years from June 1, 1998, to expire June 1, 2008; the above conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on August 25, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for a period of ten (10) years, to expire on June 1, 2018, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; there be no change in ownership or operating control of the physical culture establishment without prior

MINUTES

application to and approval from the Board; all conditions from prior resolutions not specifically waived by the Board remain in effect; this approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on April 8, 2014, under the subject calendar number, the Board further amended the resolution to permit the 3,999 square foot enlargement of the PCE into adjoining space in the subject site on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; signage for the PCE comply with the C2 regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that no changes to the operator (Bodhi Fitness) or operations of the PCE have occurred or are proposed and maintains the same hours of operation: Monday through Friday, 24 hours per day, and Saturday and Sunday, from 7:00 a.m. to 12:00 a.m.; and

WHEREAS, the applicant also requests an amendment to permit enlargement of the existing PCE space by 4,037 square feet, for a total PCE floor area of 17,318, and interior modifications to the PCE layout to utilize the new floor area; and

WHEREAS, by letter dated April 5, 2019, the Fire Department states that they have no objection to the application as these premises have a fire alarm and sprinkler system that have been inspected and tested satisfactorily, and the Licensed Public Place of Assembly Unit has been performing annual inspections of the public assembly space and have found it to be in compliance with all rules and regulations of the Fire Department; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, at hearing, the Board expressed concern regarding compliance with the condition that off-street garage parking be maintained with clearly visible signs to be posted, identifying spaces designated for PCE members only; and

WHEREAS, in response, the applicant represented, and the Board agreed, that the condition required exterior signage, as opposed to signage on the individual spaces, and provided evidence of compliance with said condition; and

WHEREAS, accordingly, the Board finds that an extension of term of the special permit and the subject amendment to permit an expansion of the PCE space and modifications to the interior layout of the PCE are appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals further *amends* the resolution, dated June 11, 2002, as amended through April 8, 2014, so that, as amended, this portion of the resolution reads: “to permit an extension of term of the special permit, to expire on June 1, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘June 20, 2018’-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 1, 2028;

THAT the permitted hours of operation shall be: Monday through Friday, 24 hours per day, and Saturday and Sunday, from 7:00 a.m. to 12:00 a.m.;

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

THAT a sign shall be maintained within the PCE stating that no children under the age of eighteen (18) are permitted;

THAT accessory parking in the cellar be shall be provided and maintained with an entrance from 35th Avenue and a sign clearly visible from the public street identifying parking designated for PCE members;

THAT all signage on the site shall comply with all applicable provisions of the Zoning Resolution;

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

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT a new certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 246-01-BZ”) shall be obtained within one (1) year, by April 23, 2020;

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

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

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

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

MINUTES

Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, April 23, 2019.

218-58-BZ

APPLICANT – Nasir J. Khanzada, for Norman Dawson, owner.

SUBJECT – Application September 20, 2018 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on July 29, 2018; Amendment to permit the legalization of the addition of an accessory convenience store; Waiver of the Board’s Rules.

PREMISES AFFECTED – 77-40 Hewlett Street, Block 08555, Lot 60, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

222-90-BZ

APPLICANT – Kennedys CMK LLP by David M. Kupfer, for 80-02 Fee Owner LLC, owner; 24 Hour Fitness Holdings LLC, lessee.

SUBJECT – Application July 5, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on August 13, 2016; Amendment to permit reflect a new operator, changes in hours of operation and minor alteration to the layout; Extension of Time to Obtain a Certificate of Occupancy which expired on March 7, 2009; Waiver of the Board’s Rules. C4-4 zoning district.

PREMISES AFFECTED – 80-02 Kew Gardens Road, Block 3348, Lot 37, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for postponed hearing.

208-03-BZ

APPLICANT – Eric Palatnik, P.C., for Shell Road LLC, owner.

SUBJECT – Application October 19, 2018 – Extension of Term and Amendment of a previously approved Variance (§72-21) which permitted an enlargement of a one-story commercial building to a two-story commercial building, occupied as a catering hall (Use Group 9) which expires on October 19, 2019. M1-1 and C1-2/R4 Special Ocean Parkway Special District.

PREMISES AFFECTED – 2555 Shell Road, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 20,

2019, at 10 A.M., for continued hearing.

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

183-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1400 Retail Owner LLC, owner; TSI West 115th Street LLC dba New York Sports Club, lessee.

SUBJECT – Application January 29, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building which expired on November 1, 2018; Amendment to permit a change in the hours of operation; Waiver of the Board Rules. C4-5X zoning district.

PREMISES AFFECTED – 1400 Fifth Avenue, Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

MINUTES

APPEALS CALENDAR

238-15-A thru 243-15-A

APPLICANT – Jeffrey Geary, for Ed Sze, owner.

SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 29, 2015, acting on New Building Application Nos. 420653885, 420653894, 420653901, 420653910, 420653929, and 420653938, reads in pertinent part:

“GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2008 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of six buildings that do not front on a mapped street; and

WHEREAS, a public hearing was held on this application on June 28, 2016, after due notice by publication in *The City Record*, with continued hearings on August 23, 2016, November 1, 2016, September 26, 2017, December 12, 2017, June 5, 2018, August 14, 2018, November 8, 2018, February 5, 2019, and April 23, 2019, and then to decision on that date; and

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

WHEREAS, Community Board 10, Queens, recommends approval of this application on condition that signage indicating no parking on Dunton Court in front of the subject site be installed, and the street be repaved with a proper gutter slope; and

WHEREAS, the Board was also in receipt of one form letter in support of the application; and

WHEREAS, the subject site is located on the south

side of Dunton Court, between 102nd Street and 104th Street, in an R3A1 zoning district and in the Special Coastal Risk District, in Queens; and

WHEREAS, the site has approximately 260 feet of frontage along Dunton Court, 80 feet of depth, 23,189 square feet of lot area and is vacant; and

WHEREAS, Dunton Court has a width of approximately 30 feet at the subject site, which provides access 102nd Street and 104th Street, mapped streets; and

WHEREAS, the applicant proposes to subdivide the site into six separate tax lots each with a semi-detached residential dwelling fronting on Dunton Court, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the proposed structure on the site comply with all zoning regulations applicable in the underlying zoning district and will comply with Flood Zone requirements of the New York City Building Code and relevant FEMA regulations regarding residences in flood zones; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Dunton Court at a width of 30 feet at the subject site was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, by letter dated May 17, 2016, the Fire Department stated no objection to the application subject to the following requirements: the curb to curb width for the length of Dunton Court adjacent to the proposed development’s zoning lot, measuring 289.91 feet, be a minimum width of 30 feet; no parking signs be posted along the southern portion of Dunton Court every 75 feet along the entire length of the proposed development in accordance with the NYC Fire Code Section 503.2.7.2.1; and all approved plans indicate that all buildings will be fully sprinklered; and

WHEREAS, by letter dated October 13, 2016, the Fire Department states that they reviewed the latest submission, dated September 13, 2016, concentrating on the Fire Department requirements relating to emergency vehicle road access, site access and fire protection systems and the submission complies with all related Fire Department Code issues and includes all necessary notes on the drawings; and

WHEREAS, over the course of hearings, the Board raised concern regarding the applicant’s ability to prevent parking in front of the subject site and directed a homeowners association agreement and restrictive declaration be recorded against the property to commit to, among other conditions, prevent parking at the subject site; and

1 The subject site was located within an R3-1 zoning district when filed and, pursuant to the Hamilton Beach Resiliency Rezoning (C 170255 ZMQ), adopted June 21, 2017, was rezoned to an R3A zoning district.

MINUTES

WHEREAS, the Board requires Declarant to execute and record this declaration as a condition precedent to its grant of the waiver of General City Law § 36; and

NOW, THEREFORE, in consideration of BSA approval to allow the proposed construction of buildings not fronting on a legally mapped street, contrary to Article III, General City Law 36, Declarant does hereby declare that Declarant and its successors and/or assigns, shall be legally responsible for compliance with the following restrictions:

1. Upon the City of New York's abandonment of maintenance of the Dunton Frontage, Declarant shall be responsible for future maintenance of the Dunton Frontage to the center line of Dunton Court, including street repairs and sanitation services thereon, as depicted on the site plan annexed as Schedule A and by this reference made a part hereof;
2. Parking shall be prohibited along the Dunton Frontage and the Fire Department shall have the ability to enforce parking restrictions;
3. This declaration shall become void upon the addition of the Dunton Frontage to the official map of the City of New York;
4. This declaration may not otherwise be modified, amended or terminated without the prior written consent of the BSA;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
6. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
7. This declaration shall be recorded at the office of the Queens County Clerk against the Subject Lots and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the Subject Lots and in any deed for the conveyance thereof.

THIS DECLARATION IS IN ADDITION TO AND SEPARATE FROM ANY RECORDED DECLARATION PERTAINING TO MAINTENANCE AND REPAIR OF STREETS, SIDEWALKS AND COMMON ELEMENTS LOCATED WITHIN THE PROPERTY LINES OF THE SUBJECT LOTS EXECUTED BY THE DECLARANT OR HOMEOWNERS ASSOCIATION.

THIS DECLARATION IS ONLY EFFECTIVE UPON APPROVAL BY THE BOARD OF STANDARDS AND APPEALS OF THE APPLICATION FILED UNDER CAL. NOS.

238-15-A TO 243-15-A AND UPON SUBSEQUENT COMPLETION OF CONSTRUCTION AND ISSUE OF A CERTIFICATE OF OCCUPANCY PURSUANT TO SUCH APPROVALS, OTHERWISE THIS DECLARATION IS OF NO EFFECT; and

WHEREAS, the applicant provided a homeowners association agreement, stating the following:

"Street parking shall be in accordance with the conditions of Section 8 the Restrictive Declaration which will be recorded against tax lot 1306 and the regulations of the City of New York whereby no street parking will be allowed on Dunton Court. This applies to the applicable parties, without limitation: Tenants, visitors, and Owners. No parking signs shall be posted along the southern portion of Dunton Court every seventy five feet along the entire property line length of Dunton Court. Association members shall acknowledge in writing that the Association's failure to enforce these regulations may result in a compliance hearing before the NYC Board of Standards and Appeals (BSA), and or revocation of a BSA grant, and or revocation of Certificate of Occupancy, and or other enforcement actions by the BSA. The Association will tow cars that are parked in violation of the "No Parking" signs;" and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated September 29, 2015, acting on New Building Application Nos. 420653885, 420653894, 420653901, 420653910, 420653929, and 420653938, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of six buildings that do not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 23, 2019"-One (1) sheet; and *on further condition*:

THAT no parking shall be permitted on Dunton Ct;

THAT the roadway shall be maintained in good condition including utilities, as per Restrictive Declaration filed under City Register File Number 2019000382038;

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

THAT a certificates of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 238-15-A through 243-15-A"), shall be obtained within four (4) years, by April 23, 2023;

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

THAT the approved plans shall be considered

MINUTES

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 23, 2019.

2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application December 1, 2017 – Pursuant to § 645 of the New York City Charter, the Department of Buildings (the Department") respectfully submits to the Board of Standards and Appeals (the "Board") this statement in support of its application to modify certificate of occupancy 321114450F dated September 1, 2015.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

2019-45-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application January 31, 2019 – Appeal of the DOB interpretation (dated 1/31/2019) that motor freight station for regulated medical waste use at the premises constitutes a UG 18 use pursuant to ZR § 42-15 and seeks the Board’s confirmation that such use constitutes a UG 16 use pursuant to ZR § 32-25.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4265-BZ

CEQR #17-BSA-025M

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 27, 2016, acting on New Building Application No. 122567999, reads in pertinent part:

1. Proposed Use Group 6 commercial use on the ground floor is contrary to Zoning Resolution Section 42-14(D)(2)(B);
2. Proposed Use Group 2 residential use on the upper floors is contrary to Zoning Resolution Section 42-10; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-5B zoning district, the development of a seven-story, with cellar, mixed-use commercial and residential building that does not comply with zoning regulations for use, contrary to ZR §§ 42-14D(2)(b) and 42--10; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, with continued hearings on October 30, 2018, January 8, 2019, and March 5, 2019, and then to decision on April 23, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application on condition that the financial feasibility study be accurate with respect to its calculations and conclusions, that there be no eating or drinking establishment on the first floor or cellar, that there be limitations on the depth of the rear yard, that the rear yard only be used for a commercial use, that the cellar extend to

MINUTES

the full length of the lot, that there be hardware on the easterly wall of the building to accommodate vines, that there be limitations on the use of the penthouse terrace, that the rear balconies be eliminated and that a construction protocol agreement be established between the subject site and adjacent sites; and

WHEREAS, the subject site is located on the north side of Bleecker Street, between Lafayette Street and the Bowery, in an M1-5B zoning district, in the NoHo East Historic District, in Manhattan; and

WHEREAS, the subject site has approximately 20'-0" of frontage along Bleecker Street, between 67'-2" and 68'-0" feet of depth, 1,352 square feet of lot area and is occupied by a three-story, with cellar, residential building to be demolished; and

WHEREAS, the applicant proposes to develop a seven-story, with cellar, mixed-use commercial and residential building with 6,488 square feet of floor area (4.80 FAR) with 1,092 square feet of commercial floor area at the cellar and first floors (0.81 FAR) and 5,396 square feet of floor area at the first through seventh floors (3.99 FAR) and a rear yard with a depth of 19'-0"; and

WHEREAS, the applicant submits that, at the subject site, commercial uses in Use Group 6 are not permitted in the cellar or on the first floor under ZR § 42-14D(2)(b), and Use Group 6 residential uses are not permitted under ZR § 42-10; and

WHEREAS, the applicant submits that the small lot size, narrowness, shallow depth, and vacant condition of the subject site are unique physical conditions that create practical difficulties or unnecessary hardship in developing the subject site in strict compliance with the Zoning Resolution; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, finding that only six other sites (less than 3 percent) have lot areas of 1,360 square feet or less and that the subject site is the only undersized vacant lot; and

WHEREAS, the applicant notes that an as-of-right development would consist of a seven-story, with cellar, commercial development used for showrooms (Use Group 9) in the cellar and on the first floor and offices (Use Group 6) on the first floor through seventh floor that would be severely constrained by inadequate floor plates in light of the site's small lot size and shallow depth; and

WHEREAS, in response to questions from the Board at hearing, the applicant further submits that renovation and conversion of the existing three-story, with cellar, building for use as showrooms (Use Group 9) in the cellar and on the first floor and offices (Use Group 6) on the first floor through the third floor would also be severely constrained by inadequate floor plates and provided evidence that enlargement of the existing structure would not be feasible; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable

zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that as-of-right development options—consisting of a seven-story, with cellar, commercial development and consisting of the renovation and conversion of the existing three-story, with cellar, building, each option to be used as showrooms (Use Group 9) in the cellar and on the first floors with offices (Use Group 6) on the upper floors—would result in substantial losses on investment but that the proposed development would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed development will not alter the character of the surrounding area; and

WHEREAS, in support of this contention, the applicant studied the area in the vicinity, finding a number of buildings with heights ranging from 70 feet to 85 feet on the subject block and that the proposed development is comparable in height to the seven-story, with cellar, residential building immediately adjacent to the subject site; and

WHEREAS, the applicant further submits that, on the subject block, there are approximately 17 buildings with commercial uses on the first floor and approximately 18 buildings with residential or joint living-work quarters for artists; and

WHEREAS, the applicant states that, while there are a number of non-complying rear yards on the subject block, the lot immediately to the rear of the subject site provides a complying rear yard with a depth of 35 feet; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant modified the design of the proposed development to provide a complying rear yard with a depth of 19 feet, thereby ensuring that the proposed development would not adversely affect adjacent properties; and

WHEREAS, the applicant also provided a shadow study, a façade-massing comparison and a photographic streetscape study indicating that the proposed development would comport with the built conditions of the surrounding area; and

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

WHEREAS, the applicant submits that the practical difficulties or unnecessary hardship at the subject site do not constitute a self-created hardship; and

WHEREAS, in response to questions from the Board at hearing, the applicant notes that demolition of the existing

MINUTES

building is necessary because the structure's age, surrounding construction and the structure's original construction make it infeasible to renovate or enlarge and that the condition of the existing building does not stem from neglect or deferred maintenance; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant modified the proposed development to provide a complying rear yard, which the financial feasibility study indicates would provide a modest return on investment; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment ("EAS") CEQR No. 17BSA025M, received February 20, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction; and

WHEREAS, by letter dated May 24, 2018, the New York City Department of Environmental Protection ("DEP") states that the Revised April 2018 Phase II Work Plan and Site-Specific Health and Safety Plan are acceptable so long as, upon completion of investigation activities, the applicant submits a detailed Phase II report to DEP for review and approval, which report shall include, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil, groundwater and soil vapor analytical results (i.e., the New York State Department of Environmental Conservation 6 NYCRR Part 375 Water Quality Regulations and the New York State Department of Health's October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York), updated site plans depicting soil locations, boring logs and remedial recommendations, if warranted; and

WHEREAS, by letter dated May 29, 2018, DEP states that the proposed project would not result in any significant noise or air quality impacts; and

WHEREAS, by correspondence dated December 19,

2018, the New York City Landmarks Preservation Commission ("LPC") states that the proposed project affects a designated landmark or is located within a designated historic district; that it may be archaeologically significant; and that accordingly a restrictive declaration shall be recorded against the property; and

WHEREAS, by letter dated December 21, 2018, DEP states that it has determined that an (E) designation for hazardous materials should be placed on the site (No. E-517) to ensure that testing and mitigation will be provided as necessary before any soil disturbance or future development and that the applicant shall coordinate further hazardous materials assessments through the Office of Environmental Remediation; and

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

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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-5B zoning district, the development of a seven-story, with cellar, mixed-use commercial and residential building that does not comply with zoning regulations for use, contrary to ZR §§ 42-14D(2)(b) and 42--10; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received April 22, 2019"—13 sheets; and *on further condition*:

THAT the restrictive declaration required by the New York City Landmarks Preservation Commission shall be recorded against the property prior to the issuance of the Board's resolution (City Register File No. 2020000007554, recorded January 8, 2020);

THAT an (E) designation for hazardous materials shall be placed on the site (No. E-517) to ensure that testing and mitigation will be provided as necessary before any soil disturbance or future development, and the applicant shall coordinate further hazardous materials assessments through the Office of Environmental Remediation;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2016-4265-BZ"), shall be obtained within four years, by April 23, 2023;

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

MINUTES

Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 23, 2019.

2018-117-BZ

CEQR #19-BSA-011K

APPLICANT – Eric Palatnik, P.C., for Aron Ungar, owner.
SUBJECT – Application July 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two family, two-story home contrary to ZR §23-142 (floor area ratio) and ZR §23-461 (side yard requirements). R5 zoning district.

PREMISES AFFECTED – 2060 63rd Street, Block 5542, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2018, acting on Department of Buildings (“DOB”) Application No. 321782433, reads in pertinent part:

Proposed vertical and horizontal enlargement of an existing two-family two-story building located in R5 district is non-compliant in regard to:

1. [...]1
2. Proposed side yard is contrary to ZR 23-461(B);

And must be referred to the Board of Standards and Appeals for a special permit pursuant to ZR 73-622; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R5 zoning district, the enlargement of a two- (2) family semi-detached dwelling that does not comply with the zoning requirements for side yards, contrary to ZR § 23-461(b); and

WHEREAS, a public hearing was held on this

application on February 26, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 23, 2019, and then to decision on that date; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application on condition that the front of the property remain in the same sightline and character of the surrounding homes; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application and one (1) form letter in opposition to this application raising concerns regarding the size of the proposed building; and

WHEREAS, the subject site is located on the south side of 63rd Street, between 20th Avenue and 21st Avenue, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 23 feet of frontage along 63rd Street, a depth ranging from 148’-2.25” at the western side lot line to 154’-6” at the eastern side lot line, 3,480 square feet of lot area, and is occupied by a two (2) story plus cellar two- (2) family semi-detached dwelling containing 1,595 square feet of floor area (0.46 FAR), 75 percent of open space (2,605 square feet), 25 percent of lot coverage (875 square feet), a front yard with a depth of 15’-3” feet, a rear yard with a depth of 78’-2.25”, one (1) side yard with a width of three (3) feet and a concrete block garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*² of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not

1 The applicant initially received an objection for exceeding the floor area requirements of ZR § 23-142. Over the course of hearings, the applicant revised the proposal to provide a complying floor area ratio and no longer requires relief under that section.

2 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a semi-detached two- (2) family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to demolish the garage and both horizontally and vertically enlarge the building, resulting in a three- (3) story plus cellar two- (2) family semi-detached dwelling with 4,342 square feet of floor area (1.25 FAR), 50 percent of open space (1,740 square feet

of open space), 50 percent of lot coverage (1,740 square feet), a rear yard with a depth of 44'-4.125", one (1) side yard with a width of three (3) feet and two (2) off-street parking spaces; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 875 square feet to 1,740 square feet, the second floor from 720 square feet to 1,585 square feet and create a third floor with 1,018 square feet of floor area; and

WHEREAS, at the subject site, one (1) side yard with a width of eight (8) feet is required pursuant to ZR § 23-461(b); and

WHEREAS, the applicant provided an analysis of single- or two-family semi-detached dwellings located on interior lots within 400 feet of the subject premises and within an R5 zoning district (the "Study Area") concluding that, of the 104 qualifying residences, 100 residences (96 percent) have a side yard with less than eight (8) feet in width with side yards ranging from 0 feet to 7 feet in width, and 44 residences (42 percent) have a side yard with three (3) feet or less in width; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA011K dated July 18, 2018; and

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

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R5 zoning district, the enlargement of a two- (2) family semi-detached dwelling that does not comply with the zoning requirements with regards to side yards, contrary to ZR § 23-461(b); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "April 23, 2019"-Eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

MINUTES

building: one (1) side yard with a minimum width of three (3) feet, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by April 23, 2023;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-117-BZ”) shall be obtained within four (4) years, by April 23, 2023;

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

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

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

Adopted by the Board of Standards and Appeals, April 23, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M. for continued hearing.

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – Variance (§72-21) to permit legalization of a Physical Cultural Establishment (*Harbor Fitness*) on a portion of the cellar and first floors contrary to ZR §§22-10 & 32-10. R6B & C4-3A zoning district.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

2017-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cee Jay Real Estate Development Corp., owner.

SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a three-story, single family residence contrary to ZR §23-45 (Front Yard), ZR § 23-461(a) (Side Yards on Corner Lots), ZR §25-622 (Parking Spaces between the street wall line and street line) and ZR §23-451 (Plantings on Corner Lots). R3-1 zoning district.

PREMISES AFFECTED – 311 Adams Avenue, Block 3679, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board’s Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for adjourned hearing.

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M. for continued hearing.

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 104 DeGraw Street, Block 329,

MINUTES

Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M. for continued hearing.

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

Negative:0

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for decision, hearing closed.

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 23, 2019
1:00 P.M.**

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

ZONING CALENDAR

2018-174-BZ

CEQR #19-BSA-056M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for A & L 1440, LLC, owner; 305 Fitness Studio 3rd Avenue LLC, lessee.

SUBJECT – Application November 13, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (305 Fitness) to occupy the cellar, first and second floors of an existing two-story building contrary to ZR §32-10. C1-9R8B zoning district.

PREMISES AFFECTED – 1440 3rd Avenue, Block 1510, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated October 10, 2018, acting on Department of Buildings (“DOB”) Application No. 123376444, reads in pertinent part:

Proposed Physical Culture Establishment is not [...] permitted as-of-right per ZR 32-31. Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, a physical culture establishment (“PCE”) on portions of the cellar level, first floor and second floor of an existing two-(2) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the west side of Third Avenue, between East 81st Street and East 82nd

Street, partially within a C1-9 zoning district and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage along Third Avenue, 102 feet of depth, 2,609 square feet of lot area and is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the applicant represents that the subject lot extends approximately two (2) feet into the R8B zoning district and the PCE is located entirely within the C1-9 portion of the subject site; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 810 square feet of floor space in the cellar with storage space; 2,350 square feet of floor area on the first floor with the PCE entrance, reception area, DJ booth, exercise studio and restroom; and, 905 square feet of floor area on the second floor with men's and women's restrooms, lockers, a waiting space and an office; and

WHEREAS, the PCE opened in November 2018 as "305 Fitness," with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 9:30 a.m. to 5:30 p.m.; and

WHEREAS, the applicant states that, while the PCE is the only use in the subject commercial building, noise abatement measures have been installed in the PCE space to ensure that sound levels emanating from the PCE, including that from any sound system, do not exceed 45 dBA; specifically, the exercise studio is isolated with sound attenuating materials in the flooring, ceiling, party wall and interior partitions of the PCE, utilizing flexible acoustic sealants and sound absorbing batt insulation; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in a commercial zoning district, within a commercial building and is the only use within the subject building; and

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

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

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

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will pose no potential hazards and will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated April 5, 2019, the Fire Department states that a public assembly application is not required and due to the number of persons, a fire alarm system is also not required for these premises; a sprinkler application has been filed and the system was tested by the installer and passed; the Bureau's Fire Suppression Unit ("FSU") will conduct an inspection of the new sprinkler system; the applicant may choose to install a fire alarm system voluntarily in the entire premises and if so the Department has no objection to the installation; and, that the Fire Department has no objection to the Board's rendering a decision on this application, as the Bureau of Fire Prevention will inspect these premises and enforce any outstanding violations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-056M, dated November 13, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on portions of the cellar level, first floor and second floor, is appropriate, with certain conditions as set forth

MINUTES

below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment on the cellar level, first floor and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 5, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 1, 2028;

THAT the hours of operation shall be: Monday through Friday, 6:00 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 9:30 a.m. to 5:30 p.m.

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—and sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-174-BZ”), shall be obtained within one (1) year, by April 23, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 23, 2019.

2018-182-BZ

CEQR #19-BSA-062Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Derp Associates, LLC, owner; Blink Braddock Avenue Inc., lessee.

SUBJECT – Application November 20, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Blink*) in an existing building contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 220-05 Hillside Avenue, Block 7914, Lot 55, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 2, 2018, acting on DOB Application No. 400019243, reads in pertinent part:

Proposed PCE in a C4-1 Zoning District is contrary to Section 32-10 ZR and must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C4-1 zoning district and partially within an R3-2 zoning district, a physical culture establishment (“PCE”) on portions of the first floor of an existing one- (1) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the northwest corner of Hillside Avenue and Braddock Avenue, partially within a C4-1 zoning district and partially within an R3-2 zoning district, in Queens; and

WHEREAS, the site has approximately 137 feet of frontage along Hillside Avenue, 242 feet of frontage along Braddock Avenue, between 228 and 309 feet of depth, 97,535 square feet of lot area and is occupied by a one- (1) story plus cellar commercial building with accessory off-street parking; and

WHEREAS, the applicant represents that, while the subject tax lot is located partially within a C4-1 zoning district and partially within an R3-2 zoning district, the subject building, and thus the PCE, is located entirely within the C4-1 portion of the subject site; and

WHEREAS, the Board has exercised jurisdiction over

MINUTES

the subject site since June 4, 1991, when, under BSA Cal. No. 848-89-BZ, the Board granted a special permit, pursuant to ZR § 73-52, to permit the construction of commercial stores (Use Group 6) in a residential portion of the lot1 which creates non-conformance on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; landscaping be planted in accordance with BSA-approved plans and maintained and replaced as necessary; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use2* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the proposed PCE will occupy 18,000 square feet of floor area on the first floor with areas for exercise machines and equipment, areas for stretching, physical therapy, small group training and cardio, a front porch, office, storage area, men's and women's locker rooms with bathrooms and showers, and mechanical spaces; and

WHEREAS, the PCE is proposed to operate as "Blink Fitness," with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located in a commercial building containing only commercial tenants, noise abatement measures will be provided in the PCE to ensure that sound levels in other portions of the building, including that from any sound system, do not exceed 45 dBa, utilizing sound attenuating flooring and insulated walls; specifically, the applicant proposes to install rubber flooring in the PCE space, batt

1Pursuant to a zoning change, effective March 4, 2014 (C 140037 ZMQ), the subject building is located wholly within the C4-1 zoning district, eliminating need for relief under ZR § 73-52.

2 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

insulation in select partitions of the PCE and deflection track attachments for the partitions; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located on a busy commercial thoroughfare in a commercial zoning district, within a commercial building and will be compatible with the surrounding uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will pose no potential hazards and will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—will be installed within the proposed PCE space; and

WHEREAS, by letter dated April 6, 2019, the Fire Department states that an application has been filed for the installation of a fire alarm system, which has been disapproved, pending Board decision on this application; that these premises are protected by a sprinkler system, which has been inspected and tested satisfactorily to the Department's rules and regulations; prior to occupancy of the space, an application for a public assembly permit shall be filed, approved and permitted; and, that the Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will inspect these premises and enforce all applicable rules and regulations of the Department; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19BSA062Q, dated November 20, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C4-1 zoning district and partially within an R3-2 zoning district, the operation of a proposed physical culture establishment on the first floor of an existing one- (1) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "November 20, 2018"-Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 23, 2029;

THAT a public assembly permit for the PCE shall be obtained prior to occupancy of the space;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2018-182-BZ"), shall be obtained within four (4) years, by April 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 23, 2019.

MINUTES

2019-8-BZ

CEQR #19-BSA-071X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Fordec Realty Corp., owner; Blink Jerome Avenue Inc., lessee.

SUBJECT – Application January 11, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) on a portion of the first and the entire second floor of an existing building contrary to ZR §32-10. C8-2 zoning district.

PREMISES AFFECTED – 3000 Jerome Avenue, Block 3321, Lot 9, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated December 20, 2018, acting on Department of Buildings (“DOB”) Application No. 220664181, reads in pertinent part:

Proposed Physical Culture establishment in C8-2 Zoning district is contrary to section 32-10 ZR and requires a special permit from BSA (73-36); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C8-2 zoning district, a physical culture establishment (“PCE”) on portions of the first floor and second floor of a proposed two- (2) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 7, the Bronx, waived its recommendation of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the east side of Jerome Avenue, between Bedford Park Boulevard and East 204th Street, within a C8-2 zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along Jerome Avenue, 100 feet of depth, 10,000 square feet of lot area and is under construction of a proposed two- (2) story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings

are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the proposed PCE will occupy 5,000 square feet of floor area on the first floor with the PCE entrance, men's and women's locker rooms with bathrooms and showers, an exercise area, offices and storage; and 10,000 square feet of floor area on the second floor with exercise areas and exercise machines and office space; and

WHEREAS, the PCE is proposed to operate as "Blink Fitness," with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located in a commercial building containing only commercial tenants, with noise abatement measures will be provided in the PCE space to ensure that sound levels in other portions of the building, including that from any sound system, do not exceed 45 dBA, using sound attenuating flooring and insulated walls; specifically, the applicant proposes to install rubber flooring in the PCE space, batt insulation in select partitions of the PCE and deflection track attachments for the partitions; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located on a busy commercial thoroughfare with two- (2) way traffic serving comparable commercial buildings and will be compatible with the surrounding uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will pose no

potential hazards and will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—will be installed within the proposed PCE space; and

WHEREAS, by letter dated April 6, 2019, the Fire Department states that an application has been filed and approved for the installation of a fire alarm system, which has been approved and permitted; these premises are also protected by a sprinkler system and, in the event of activations, the fire alarm system will be activated and transmit a signal to a central office connection; prior to occupancy of the space, an application for a public assembly permit shall be filed, approved and permitted; and, that the Fire Department has no objection to the Board's rendering a decision on this application as the Bureau of Fire Prevention will inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-071X, dated January 14, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on portions of the first floor and second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C8-2 zoning district, the operation of a proposed physical culture establishment on the first floor and second floor of a proposed two- (2) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 14, 2019"-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 23, 2029;

THAT a public assembly permit for the PCE shall be obtained prior to occupancy of the space;

THAT there will be no change in ownership or operating control of the PCE without prior application to

MINUTES

and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be installed and maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-8-BZ”), shall be obtained within four (4) years, by April 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 23, 2019.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

2017-265-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application September 8, 2017 – Reinstatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board’s rules. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd Avenue, Block 822, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M. for continued hearing.

2018-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 102 Metro, LLC, owner; Sedona Fitness, lessee.

SUBJECT – Application March 6, 2018 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Sedona Fitness*) to be located on portions of the cellar, first floor and the entirety of the second floor of an existing building contrary ZR §32-10. C2-3/R3A zoning district.

PREMISES AFFECTED – 102-02 Metropolitan Avenue, Block 3900, Lot(s) 1 & 5, Borough of Queens.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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May 10, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|---------------------------------|-----|
| DOCKET | 349 |
| CALENDAR of May 21, 2019 | |
| Morning | 350 |
| Afternoon | 350 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, April 30, 2019**

Morning Calendar351

Affecting Calendar Numbers:

| | |
|-----------------------------|--|
| N/A | Adoption of new rule, 2 RCNY § 1-15, which specifically authorizes FDNY to enforce BSA resolutions within the scope of FDNY’s enforcement authority. |
| N/A | Amending 2 RCNY § 1-01.1 and adopting a new rule, 2 RCNY § 1-03.5, describing the conduct to be observed by BSA Commissioners. |
| 30-58-BZ | 184-17 Horace Harding Expressway, Queens |
| 223-00-BZ | 272 West 10 th Street, Manhattan |
| 208-03-BZ | 2555 Shell Road, Brooklyn |
| 933-28-BZ | 125-24 Metropolitan Avenue, Queens |
| 509-37-BZ | 202-01 Rocky Hill Road aka 202-02 47 th Avenue, Queens |
| 322-79-BZ | 43-20 Little Neck Parkway, Queens |
| 149-97-BZ | 150-19 11 th Avenue, Queens |
| 85-99-BZ | 1106 Metcalf Avenue, Bronx |
| 197-02-BZ | 2825 Nostrand Avenue, Brooklyn |
| 177-06-BZ | 1840 Richmond Terrace, Staten Island |
| 49-12-BZ | 34-09 Francis Lewis Boulevard, Queens |
| 205-15-A thru 214-15-A | 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Queens |
| 2017-16-A thru 2017-19-A | 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Queens |
| 2018-105-A | 150-87 Clintonville Court, Queens |
| 2017-295-BZ | 128 West 26 th Street, Manhattan |
| 2017-315-BZ | 2030 Eastchester Road, Bronx |
| 2018-21-BZ | 1773 East 22 nd Street, Brooklyn |
| 2018-194-BZ | 2317 Avenue K aka 1086 East 24 th Street, Brooklyn |
| 2017-217-BZ | 4855 Hylan Boulevard, Staten Island |
| 2017-233-BZ | 446-448 Park Avenue, Brooklyn |
| 2017-273-BZ | 975 East 24 th Street, Brooklyn |
| 2018-16-BZ | 974 Sacket Avenue, Bronx |
| 2018-48-BZ | 5205 Hylan Boulevard, Staten Island |

Afternoon Calendar373

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-200-BZ | 100 West 72 nd Street, Manhattan |
| 2018-140-BZ | 100-03 North Conduit Avenue, Queens |
| 2018-149-BZ | 230-48 146 th Avenue, Queens |
| 2018-164-BZ | 72-71 Kissena Boulevard, Queens |

DOCKETS

New Case Filed Up to April 30, 2019

2019-79-BZ

29 West 30th Street, Block 00832, Lot(s) 0024, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (CorePower Yoga) to be located on the first floor building contrary to ZR §32-10. C2-4/R7D zoning district. M1-6 district.

2019-80-BZ

15 West 18th Street, Block 00820, Lot(s) 29, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Title Boxing Club) to be located on the second floor of an existing 10-story mixed use commercial and residential building contrary to ZR §32-10. C6-4A Flatiron District located within the Ladies Mile Historic District. C6-4A district.

2019-81-BZ

144 East 39th Street, Block 894, Lot(s) 0056, Borough of **Manhattan, Community Board: 6**. Re-instatement (§11-411) of a previously approved variance which permitted office use on the third floor of an existing three-story building which expired on April 8, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Board's Rules. R6B zoning district. R8B district.

2019-82-A

430 St. Marks Place, Block 00016, Lot(s) 0120, Borough of **Staten Island, Community Board: 1**. Proposed construction of a new five story, eight dwelling unit, mixed use office and residential building located partially within the bed of a mapped but unbuilt portion of Victory Boulevard contrary to GCL 35 and a waiver of 72-01(g). C4-2 Special St.George/Upland Sub distirct . C4-2 district.

2019-83-BZ

5901 Flatlands Avenue, Block 7763, Lot(s) 0012, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) to be located within a proposed commercial building. C2-2/R3-2 zoning district. C2-2(R3-2) district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

**REGULAR MEETING
MAY 21, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 21, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

2017-147-A

APPLICANT – Beni Rachmanov/Owners of Block 6619, for Mable Assets LLC, owner; Sholom Sholom Inc., lessee.
SUBJECT – Application May 15, 2017– Appeal of a NYC Department of Buildings denial. C1-2/R4 zoning district.
PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

2018-183-A

APPLICANT – Beni Rachmanov/Owners of Block 6619, for Mable Assets LLC, owner; Sholom Sholom Daycare, lessee.
SUBJECT – Application November 20, 2018– Appeal of a NYC Department of Buildings denial. C1-2/R4 zoning district.

PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

**REGULAR MEETING
MAY 21, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 21, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-1215-BZ

APPLICANT – Eric Palatnik, P.C., for Ratna Realty Inc., owner.

SUBJECT – Application February 5, 2016 – Variance (§72-21) to permit a non-conforming Use Group 2 in an M1-6 zoning district.

PREMISES AFFECTED – 142 West 29th Street, Block 804, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, APRIL 30, 2019
10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

N/A

Board of Standards & Appeals / FDNY

Proposed Rule-Making Under the City Administrative Procedures Act (CAPA) – Draft Rules

Amending Chapter 1 and 3 through 26 of the Rules of the NYC Board of Standards and Appeals (Title 2 of the Rules of the City of New York) [and Chapters 14 and 48 of the Rules of the NYC Fire Department (Title 3 of the Rules of the City of New York)].

Adoption of new rule, 2 RCNY § 1-15, which specifically authorizes FDNY to enforce BSA resolutions within the scope of FDNY’s enforcement authority.

ACTION OF THE BOARD – Adopted.

THE VOTE TO ADOPT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

Adopted by the Board of Standards and Appeals, April 30, 2019.

N/A

Board of Standards & Appeals

Proposed Rule-Making Under the City Administrative Procedures Act (CAPA) – Draft Rules

Amending 2 RCNY § 1-01.1 and adopting a new rule, 2 RCNY § 1-03.5, describing the conduct to be observed by BSA Commissioners.

ACTION OF THE BOARD – Laid over to no-date, off-calendar.

SPECIAL ORDER CALENDARS

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, a decision of the Department of Buildings (“DOB”) dated February 28, 2018, acting on DOB application number 421458274, reads in pertinent part:

Proposal to alter building to accommodate retail convenience store and extension of term beyond December 4, 2017, is contrary to BSA Resolution # 30-58-BZ; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, extension of the term, pursuant to ZR § 11-411, of a previously granted variance that permitted the operation of an automotive service station with accessory lubricatorium, minor repair and car wash, which expired on December 4, 2017, and an amendment of the variance, pursuant to ZR § 11-412, to permit the conversion of the existing one- (1) story accessory building to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with continued hearings on October 23, 2018, March 5, 2019, March 19, 2019, and April 30, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends approval of this application on the following conditions: there be no storage of vehicles on the site; the retaining wall be repaired; the applicant comply with the request of the Board recommendations regarding the installation of bollards at the rear of the property and the relocation of a gas service tank not to be near the sidewalk; and prior conditions that apply remain; and

WHEREAS, Queens Borough President Katz also recommends approval of this application on condition that the applicant comply with all of the Community Board’s conditions and continue to adhere to the Board’s previously

MINUTES

imposed conditions; and

WHEREAS, the Board was in receipt of two (2) letters as well as oral testimony from the Auburndale Improvement Association, a civic association within whose boundary lines the subject site is located, in support of this application and recommending a ten (10) year extension of term but also raising concerns regarding the location and enclosure of a dumpster on the site, the stability of a retaining wall on the site, the storage of commercial and un-plated vehicles on the site and the failure to secure a gate at the rear of the property; and

WHEREAS, the subject site is bound by Horace Harding Expressway to the south, 185th Street to the east, and Booth Memorial Avenue to the north, in an R3-1 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 98 feet of frontage along Horace Harding Expressway, 35 feet of frontage along 185th Street, 117 feet of frontage along Booth Memorial Avenue, 6,575 square feet of lot area and is occupied by an automotive service station with a one- (1) story accessory building with lubricatorium, minor repairs and non-automatic car wash; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 20, 1959, when, under the subject calendar number, the Board granted a variance, under Section 7f, to permit, for a term of 15 years, to expire on January 20, 1974, the premises to be occupied as a gasoline service station and uses lawfully accessory thereto, substantially as proposed and as indicated on plans filed with the application, on condition that all buildings and uses then on the premises be removed and the premises be constructed and arranged as indicated on the plans above cited; there be no cellar under the accessory building; the accessory building be faced with face brick on all sides and be of the design and arrangement and location as shown on plans above cited; there be erected on the lot line of North Hempstead Turnpike (currently Booth Memorial Avenue) continuously from the westerly edge to the intersection with 185th Street and along 185th Street to the building line of Horace Harding Expressway, a masonry wall for a height of three (3) feet with a steel picket fence above to a total height of 5'-6", with suitable terminating posts; such wall along 185th Street may be reduced as to the height of pickets to a total of not less than 4'-6"; curb cuts be restricted to two (2) curb cuts to Horace Harding Expressway, where shown, each 30 feet in width, with no portion of any curb cut nearer than five (5) feet to a lot line as prolonged; at the intersection there be maintained a block of concrete extending for a distance of five (5) feet along the building line from the intersection not less than 12 inches in height; pumps be of a low approved type erected not nearer than 15 feet to the street building line of Horace Harding Expressway; gasoline storage tanks not exceed twelve 550-gallon approved tanks; along the lot line to the west where masonry walls of adjoining buildings and the accessory buildings do not occur on the lot line there be a woven wire fence of the chain link type to a total height of not less than

5'-6", including a masonry base, with suitable terminating post at the building line of Horace Harding Expressway be erected; the portion of the premises, where shown, be maintained with planting; there may be an entrance three (3) feet wide in the fence for access thereto for maintenance purposes only; the balance of the premises where not occupied by the accessory building and pumps be paved with concrete or asphaltic pavement; signs be restricted to permanent signs attached to the facade of the accessory building and to the illuminated globes of the pumps excluding all roof signs and temporary signs and advertising devices (but permitting the erection within the intersection of Horace Harding Expressway and 185th Street of one (1) post standard for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend, at right angles to Horace Harding Expressway, beyond the building line for a distance of not more than four (4) feet); such portable fire-fighting appliances be maintained as the Fire Commissioner directs; under Section 7i there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building; under Section 7e, for a similar term, there may be parking of cars waiting to be serviced provided such cars be parked in such locations as will not interfere with the servicing of the station; and, all permits be obtained and all work completed within one (1) year, by January 20, 1960; and

WHEREAS, on June 23, 1959, under the subject calendar number, the Board amended the resolution by adding that there be one (1) pump island instead of two (2), as previously permitted; and there may be a curb cut to 185th Street, 25 feet in width, as shown on the revised plan filed with the application; and, other than as amended the resolution be complied with; and

WHEREAS, on March 12, 1974, under the subject calendar number, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on March 12, 1984, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on July 10, 1984, under the subject calendar number, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on March 12, 1994, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year, by July 10, 1985; and

WHEREAS, on December 13, 1994, under the subject calendar number, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on March 12, 2004, on condition that the premises remain clear and free of debris; street trees, landscaping and fencing be maintained in accordance with BSA-approved plans; all lighting be directed downward and away from adjacent residential uses; the premises be maintained in substantial

MINUTES

compliance with the existing and proposed drawing submitted with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year, by December 13, 1995; and

WHEREAS, on October 16, 2001, under the subject calendar number, the Board reopened and further amended the resolution to permit the erection of a metal canopy over the new gasoline pump islands and to allow the alteration of the sales area to provide an attendant's booth, on condition that there be no sale of diesel fuel; there be no sale of used cars; all street trees and landscaping be installed and maintained in accordance with the BSA-approved plans; the premises be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution and all other relevant laws and regulations of the City of New York be complied with in all respects; and the work be completed and a new certificate of occupancy obtained within two (2) years, by October 16, 2003; and

WHEREAS, on December 4, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to extend the term for five (5) years, to expire on December 4, 2017, on condition that all use and operations substantially conform drawings filed with the application; the site be maintained free of debris and graffiti; signage comply with C2 district regulations; parking on the site be limited to vehicles awaiting service; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by December 4, 2013; all conditions from the prior resolution not specifically waived by the Board remain in effect; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, the applicant also seeks an amendment, pursuant to ZR § 11-412, to permit the conversion of the accessory building used for lubritorium, minor repair, and car washing into a convenience store with 650 square feet of sales area and the installation of one (1) additional gasoline dispenser; and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, which has existed in its current dimensions and location on the site since the Board's original grant of the variance in 1959, and, instead, proposes alterations to the interior only to convert the repair bays and storage area of the existing building to an accessory convenience store, thus, in accordance with ZR § 11-412, the proposed alteration of the existing one- (1) story accessory building is not in excess of 50 percent of the floor area of the building occupied by such use on December 15, 1961; and

WHEREAS, in response to inquiries from the Board, the applicant represents that, in accordance with DOB Technical Policy and Procedure Notice ("TPPN") #10/99, the proposed accessory convenience store, with 650 square feet of sales area, has a maximum retail selling floor area that is less than the lesser of 2,500 square feet or 25 percent of the subject lot area (6,575 square feet of lot area); and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the location and enclosure of a dumpster on the site, restricting access to a gated area in the rear, the lack of sufficiently detailed dimensions on the plans, the narrowness of surrounding sidewalks and the location of the proposed additional gasoline dispenser; and

WHEREAS, in response, the applicant provided photographic evidence that the rear gate was secured with a lock, properly dimensioned the plans to show a three- (3) foot wide sidewalk around the building, relocated the gasoline dispenser to avoid conflict between pedestrians and gasoline patrons, and provided plans reflecting a proposed dumpster enclosure; and

WHEREAS, by letter dated October 9, 2018, the Fire Department states that a review of Department records indicates that the subject automotive service station is current with its Fire Department permits with respect to storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; and the Department has no additional comments or recommendations relative to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated January 20, 1959, as amended through December 4, 2012, so that, as amended, this portion of the resolution reads: "to permit the conversion of the existing accessory lubritorium and automotive repair building to an accessory convenience store, permit the installation of one (1) additional gasoline dispenser, and extend the term of the variance for a term of ten (10) years, expiring December 4, 2027; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "April 30, 2019"-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 4, 2027;

MINUTES

THAT landscaping shall be installed as shown on the BSA-approved plans, maintained and repaired as necessary;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises be removed within 48 hours;

THAT all building walls shall be painted and all asphalt shall be repaired as necessary so as to be maintained in a first-class condition;

THAT there shall be no parking on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT there shall be no overnight storage of vehicles on the site;

THAT the fencing and retaining wall shall be maintained in a code-compliant condition;

THAT the convenience store may be operated 24 hours per day;

THAT the dumpster enclosure shall be installed as shown on the BSA-approved plans and repaired as necessary to be maintained in first-class condition;

THAT the rear gated area shall be secured and maintained with a lock;

THAT parking on the site shall be limited to vehicles awaiting service;

THAT there shall be no sale of diesel fuel;

THAT there shall be no sale of used cars;

THAT all street trees and landscaping shall be installed and maintained in accordance with the BSA-approved plans;

THAT all lighting shall be directed downward and away from adjacent residential uses;

THAT signage shall comply with C2 district regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number ("BSA Cal. No. 30-58-BZ") shall be obtained within one (1) year, by April 30, 2020; 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, April 30, 2019.

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group ("UG") 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner dated June 7, 2018, acting on Department of Buildings ("DOB") Application No. 123448563 reads in pertinent part:

ZR 24-11: The proposed plans are contrary to those approved by the BSA Cal. No. 22-300-BZ and Section 24-11. Refer to BSA for approval; and

WHEREAS, this is an application to amend a variance, previously granted pursuant to ZR § 72-21, and permit the enlargement of a Use Group ("UG") 3 school that does not comply with the maximum permitted lot coverage, contrary to ZR § 24-11; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with continued hearings on February 26, 2019, March 26, 2019, and April 30, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is comprised of two consecutive tax lots bound by West 10th Street to the north, Greenwich Street to the east and Washington Street to the west, in an R6 zoning district and the Greenwich Village Historic District – Extension 1, in Manhattan; and

WHEREAS, the site has approximately 270 feet of frontage along West 10th Street, 88 feet of frontage along Greenwich Street, 41 feet of frontage along Washington Street, 18,100 square feet of lot area and is occupied by two five-story plus cellar buildings utilized as a UG 3 school; and

WHEREAS, this application is filed on behalf of the Village Community School, a non-profit educational corporation chartered by the New York State Board of

MINUTES

Regents and accredited by the New York State Association of Independent Schools to provide educational instruction for children in kindergarten through 8th grade (the "School"); and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2001, when, under the subject calendar number, the Board issued a Negative Declaration under 6 NYCRR Part 617.13 and granted a variance, pursuant to ZR § 72-21, permitting the modernization of a private, non-profit school kindergarten through eighth grade (Use Group 3) by replacing a one-story gymnasium space with a five-story enlargement, contrary to ZR §§ 24-11 and 24-522, on condition that all work substantially conform to drawings filed with the application; the premises remain graffiti-free at all times; no sound amplification devices be used on the rooftop recreation area after 6:00 p.m.; use of the rooftop recreation area be limited to the hours of 8:00 a.m. to 9:00 p.m.; as part of the Negative Declaration issued under 6 NYCRR 617.13, the owner provide an archaeological documentary study for the site to the Landmarks Preservation Commission; the results of the archaeological study be submitted to the Board's Executive Director and the LPC; the existing buildings' hallways be equipped with a smoke detection system connected to a Fire Department approved central station; a fire alarm system connected to a Fire Department approved central station be installed throughout the existing building; an automatic wet sprinkler system connected to a Fire Department approved central sate be installed throughout the cellar and all mechanical and electrical rooms of the existing building; a pair of three-hour fire rated doors on self-closing approved electro-magnetic devices to be activated by a fire alarm, smoke detection, or automatic wet sprinkler systems be provided and maintained for the new building; an automatic wet sprinkler system, a fire alarm system and a smoke detection system shall be installed throughout the new building with all three systems connected to a Fire Department approved Central Station; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and that substantial construction be completed within four (4) years, in accordance with ZR § 72-23; and

WHEREAS, the applicant now seeks an amendment of that approval to permit the construction of a three-story plus cellar and rooftop play yard enlargement with 17,364 square feet of floor area on the eastern corner lot portion of the site wholly located on tax lot 12 and presently occupied with a play yard that will increase the lot coverage on the corner lot portion of tax lot 12 from 9 percent to 92 percent and the lot coverage on the interior lot portion of tax lot 12, presently occupied by a five-story plus cellar school building constructed in or around 1886, from 86 percent to 88 percent; and

WHEREAS, the applicant states that the enlargement is necessary to provide space for (1) on-site physical education facilities to offset the loss of access to facilities off-site at Pier 40; (2) science, technology, engineering, arts and mathematics project-based work; (3) an expanded library and media center; (4) world language classrooms and dedicated mathematics classrooms; and (5) expanded science labs; and

WHEREAS, accordingly, the applicant submits that the proposed enlargement will include a regulation-sized double-height gymnasium in the cellar; a woodshop on the first floor; a library and media center, science and technology labs on the second floor; science labs and world language and mathematics classrooms on the third floor; and a play yard on the roof; and

WHEREAS, counsel engaged by a non-profit organization of residents living in close proximity to the subject site and owners of units at 692 Greenwich Street appeared before the Board in opposition to this application (the "Opposition") citing concerns that the proposed enlargement violates the conditions of the Board's 2001 variance approval, destroys a historic playground at the site and would permanently conceal the stucco façade and original 19th Century lot-line windows of the adjacent building located at 692 Greenwich Street; and

WHEREAS, Community Board 2, Manhattan, recommends denial of this application unless the proposed lot coverage is reduced such that (1) the Greenwich Street playground is substantially retained to keep the overall site coverage consistent with R6 zoning; (2) alternative project plans for the enlargement are submitted by the applicant with greatly reduced lot coverage; (3) the lot line windows at 692 Greenwich Street are retained; (4) there be a deeded commitment that no additional stories or additional floor area will be added to the School at any time in the future and (5) the Board impose a condition capping the number of students and faculty/staff at the current number (345-355 students and 95-105 faculty and staff); and

WHEREAS, New York State Assembly Member Deborah Glick and State Senator Brad Hoylman recommended denial of this application and asked that the School alter the proposal to reduce the proposed lot coverage and work with Community Board 2 to address their concerns about increased enrollment; and

WHEREAS, at public hearing, the Board heard oral testimony from members of the public in favor of this application, noting the School's need for additional classroom and physical education space, as well as in opposition to the application, in particular, to the the proposal to increase lot coverage at the eastern corner of the site from 9 percent to 92 percent and reduce neighborhood access to light and air; and

WHEREAS, the Board was also in receipt of four letters in support of and one letter and one petition in opposition to the proposal, citing concerns that the proposed enlargement will eliminate the charm and character of the immediate area; and

MINUTES

WHEREAS, in response to discussion at the December 4, 2018, hearing regarding the subject proposal's obstruction of lot line windows at 692 Greenwich Street, the applicant explained that an 8-foot setback from the side wall of that building was explored, but deemed to be an infeasible design option that would render the enlargement less efficient and more expensive to construct; and

WHEREAS, by letter dated February 22, 2019, and prior to the second public hearing on this application, the Opposition withdrew their objections to this application and advised the Board that they no longer disputed that the proposed construction is necessary and appropriate to meet the School's programmatic needs or that the proposed enlargement would not alter the characteristics of the neighborhood; and

WHEREAS, the School asserts that the proposed physical enlargement of its physical plant has been made necessary by the growth of the School's curriculum—particularly an increased emphasis in STEAM education, laboratories and changing technology—not its enrollment and, in support of that contention, submitted a programmatic needs analysis illustrating how the School's pedagogical goals, current room utilization rates, the irregular shape of the subject site and configuration of the existing buildings on the site necessitate development of the subject proposal; and

WHEREAS, the applicant submits that though a two-and-a-half-story plus cellar enlargement containing 14,476 square feet of floor area would be permitted at the subject site as-of-right, such an enlargement would result in an inefficient building that failed to provide sufficient additional program space, contained a second floor with floor-to-floor heights of 11 feet in some places and 15'-6.5" in other places, eliminate the adjacency of the media center in the library and the technology laboratory, divide the rooftop play area into two smaller areas, limiting their utility for large game plan, and would break the street wall continuity of the West 10th Street frontage; and

WHEREAS, the Board acknowledges that as an educational institution, the School is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance amendment application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that the Applicant's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because the Applicant is a non-profit institution and the requested variance is needed to further its

not-for-profit mission, the finding set forth in ZR § 72-21(b) need not be made; and

WHEREAS, the applicant submits that, consistent with ZR § 72-21(c), that the subject variance amendment, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, to wit, the proposed enlargement complies with applicable floor area and floor area ratio provisions and allows for continuity of the street wall along West 10th Street, which will be more aesthetically pleasing than the as-of-right alternative, and the relocation of the play yard from street level to the roof of the proposed enlargement will reduce ambient noise levels; and

WHEREAS, the applicant disputes the characterization of the existing play yard as one of historic or architectural significance and notes that historic records indicate its occupation by various buildings over the last two centuries, thus, the enlargement proposed herein is not inconsistent with its history of development; and

WHEREAS, the Board finds that proposed enlargement will not alter the character of the neighborhood in satisfaction of ZR § 72-21(c), that the hardship herein was not created by the applicant in satisfaction of ZR § 72-21(d) and that the amendment requested is the minimum required to accommodate the School's programmatic needs in accordance with ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, by letter dated December 3, 2018, the Fire Department states that, at the Board's request, the Tech Management Group reviewed the plans submitted with this application and requested that they be revised to comply with 2014 Fire Code ("FC") Section 504.4.1 (Rooftop Access) and provide unobstructed rooftop access on the West 10th Street and Greenwich Street elevations of the proposed enlargement; and

WHEREAS, the applicant's representative subsequently filed an application for a modification (variance) from the rooftop access and obstruction provision of FC Section 504.4 and, by letter dated April 8, 2019, the Fire Department granted the application and determined that the applicant's proposal to provide 154 feet of rooftop perimeter access on the West 10th Street and Greenwich Street provides adequate Fire Department access to and upon the rooftop on condition that: (1) the determination only modifies compliance with respect to the rooftop access and/or clear path requirements and does not modify the applicant's obligation to comply with other applicable provisions of FC504.4, including the marking and signage requirements of FC504.4.7 and 504.4.8; (2) nothing in the determination be construed to authorize construction contrary to the New York City Building Code, Zoning Resolution or other applicable laws, rules or regulations; (3) the approved modified rooftop access and/or clear path requirements as indicated on architectural drawing FSK-2.00, FSK-7.00 and FSK-8.00 dated April 4, 2019, be

MINUTES

constructed and maintained in accordance with the approved rooftop plan and maintained clear of obstructions and kept available for emergency responders and if any change is necessary, a new application shall be submitted to modify them; (4) the modification is site specific applicable only to the subject address and not transferable to any other address; (5) the following stipulations be completed as detailed on FSK-2.00, FSK-7.00 and FSK-8.00 dated April 4, 2019, prior to the commencement of the proposed telecommunications work: (a) installation of the 6-foot deep steel walkway, which will provide a continuous perimeter access landing area and a clear path along the West 10th Street and Greenwich Street exposures; (b) installation of the access ladder and the access stairs to provide two separate paths between the playground roof level and the steel walkway; and (c) installation of gates in the protective fences separating the play area from the access ladder and access stairs that must be secured by a chain and lock, which can be cut by standard bolt cutters; and

WHEREAS, in conjunction with the original application in 2001, 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. 01BSA031M dated September 27, 2000, and revised on November 16, 2000, finding that the proposed action would not have a significant adverse impact on the environment; and

WHEREAS, the applicant provided a Technical Memorandum, dated April 18, 2019, updating the 2001 EAS regarding hazardous materials, noise, and landmarks; and

WHEREAS, by letter dated November 15, 2018, the New York City Department of Environmental Protection (“DEP”) states that the agency has reviewed the October 2018 Phase II Environmental Site Assessment Work Plan (“Work Plan”) and Health and Safety Plan (“HASP”), finds both acceptable as long as the HASP is revised to include information fact sheets and/or Safety Data Sheets for potential contaminants of concerns and requests that, upon completion of the investigation activities, the applicant submit a detailed Phase II report to DEP for review and approval including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil, groundwater, and soil vapor analytical results (i.e., New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375, NYSDEC Water Quality Regulations, and the New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York), updated site plans depicting sample locations, boring logs, and remedial recommendations, if warranted; and

WHEREAS, by letter dated November 30, 2018, DEP states that the agency has reviewed the Noise chapters and analysis prepared by the applicant’s consultant for the subject proposal and determined that the proposal would not result in potential significant adverse noise impacts; and

WHEREAS, by letter dated December 10, 2018, the New York City Department of Transportation (“DOT”)

states, regarding school safety review of the proposal, that the agency is supportive of the application the condition that the school: (1) construct a half curb extension on the southwest corner of Greenwich Street and West 10th Street, facing Greenwich Street and designed following NYC DOT standards, providing additional pedestrian space for students crossing Greenwich Street and improving pedestrian safety by shortening crossing distances; (2) upgrade the pedestrian ramps on the southwest corner of Greenwich Street and West 10th Street to meet ADA and NYC DOT standards; and (3) upgrade the pedestrian ramps on the southeast corner of Washington Street and West 10th Street to meet ADA and NYC DOT standards; and

WHEREAS, DOT additionally requests that upon approval of the application and near the end of construction, the school notify DOT so that the agency may determine if additional traffic safety improvements or parking regulation changes—including the placement of appropriate school warning signage and school loading zones sited according to DOT standards—are necessary; and

WHEREAS, by letter dated March 1, 2019, DEP states that the agency has reviewed the January 2019 Phase II Environmental Site Investigation (“Phase II”), finds the February 2019 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) acceptable and, at the completion of the project, the applicant must submit a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—to DEP for review and approval; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) reviewed this application and notes that the project site is located within the LPC-designated and State and National Register eligible Greenwich Village Extension Historic District; that 268 West 10th Street (Block 630, Lot 12) and 665 Washington Street (Block 630, Lot 9) are of architectural significance, are located within LPC and National Register Historic Districts and have no archaeological significance; and that LPC received a letter detailing the results of the limited field testing completed for this project and concurs that there are no further archaeological concerns for the project area; and

WHEREAS, LPC issued Certificate of Appropriateness (COFA-19-31392), dated December 3, 2018, and expiring November 27, 2024, to the subject site permitting the demolition of a one-story brick garage and brick and stucco-clad wall at the perimeter of the playground bounded by West 10th Street to the north and Greenwich Street to the east and constructing a four-story building; and

WHEREAS, by communication dated April 10, 2019, LPC indicated that the revised roof plans approved by the Fire Department would be acceptable to the Commission if

MINUTES

there is no visibility of the railing over the parapet and that the Commission had no objection to the Board voting on this application; and

WHEREAS, based on the foregoing, the Board has determined that the proposed action will not result in any significant environmental effects and that the requested amendment to the variance is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 6, 2001, so that, as amended, this portion of the resolution reads: “to permit a three-story plus cellar enlargement that does not comply with the maximum permitted lot coverage, contrary to ZR § 24-11; *on condition* that all work shall substantially conform to drawings as they apply to the objections noted above and filed with this application marked ‘Received April 19, 2019’—Nineteen (19) sheets and “Approved April 8, 2019”—Three (3) sheets (rooftop plan FSK-2.00, FSK-7.00 and FSK-8.00); and *on further condition*:

THAT the bulk parameters of the site shall be as follows: a maximum of 92 percent lot coverage at the east corner portion of the lot and a maximum of 88 percent lot coverage in the interior portion of the lot;

THAT the School shall construct a half curb extension on the southwest corner of Greenwich Street and West 10th Street, facing Greenwich Street, designed following NYC Department of Transportation (“DOT”) standards to provide additional pedestrian space for students crossing Greenwich Street and improve pedestrian safety by shortening crossing distances;

THAT the School shall upgrade the pedestrian ramps on the southwest corner of Greenwich Street and West 10th Street to meet ADA and NYC DOT standards;

THAT the School shall upgrade the pedestrian ramps on the southeast corner of Washington Street and West 10th Street to meet ADA and NYC DOT standards;

THAT near the end of construction, the School shall notify DOT so that the agency may determine if additional traffic safety improvements or parking regulation changes—including the placement of appropriate school warning signage and school loading zones sited according to DOT standards—are necessary;

THAT at the completion of the project, the School shall submit a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—to the NYC Department of Environmental Protection (“DEP”) for review and approval;

THAT, in accordance with FDNY approval under FPIMS No. 39067871B, the approved modified rooftop access and/or clear path requirements as indicated on

architectural drawing FSK-2.00, FSK-7.00 and FSK-8.00 dated April 4, 2019, shall be constructed and maintained in accordance with the approved rooftop plan and maintained clear of obstructions and kept available for emergency responders and if any change is necessary, a new application shall be submitted to the Fire Department to modify them;

THAT, in accordance with FDNY approval under FPIMS No. 39067871B, the following stipulations shall be completed as detailed on FSK-2.00, FSK-7.00 and FSK-8.00 dated April 4, 2019, prior to the commencement of the proposed telecommunications work: (a) installation of the 6-foot deep steel walkway, which will provide a continuous perimeter access landing area and a clear path along the West 10th Street and Greenwich Street exposures; (b) installation of the access ladder and the access stairs to provide two separate paths between the playground roof level and the steel walkway; and (c) installation of gates in the protective fences separating the play area from the access ladder and access stairs that must be secured by a chain and lock, which can be cut by standard bolt cutters;

THAT the premises shall remain graffiti-free at all times;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal. No. 223-00-BZ”), shall be obtained within four (4) years;

THAT this approval is limited to the relief granted by the Board in response to specifically cited 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, April 30, 2019.

208-03-BZ

APPLICANT – Eric Palatnik, P.C., for Shell Road LLC, owner.

SUBJECT – Application October 19, 2018 – Extension of Term and Amendment of a previously approved Variance (§72-21) which permitted an enlargement of a one-story commercial building to a two-story commercial building, occupied as a catering hall (Use Group 9) which expires on October 19, 2019. M1-1 and C1-2/R4 Special Ocean Parkway Special District.

PREMISES AFFECTED – 2555 Shell Road, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of the term of a variance previously granted by the Board, which will expire on October 19, 2019, and an extension of time to obtain a certificate of occupancy, which expired on April 13, 2011; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 30, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Shell Road, between Avenue X and Bouck Court, partially within an M1-1 zoning district and partially within an R4 (C1-2) zoning district, in the Special Ocean Parkway Special District, in Brooklyn; and

WHEREAS, the site has approximately 104 feet of frontage along Shell Road, between 153 and 172 feet of depth, 5,507 square feet of lot area and is occupied by a two- (2) story Use Group (“UG”) 9 catering hall; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to legalize the enlargement of a one- (1) story commercial building to a two- (2) story commercial building, occupied as a catering hall (Use Group 9) which does not comply with underlying district regulations applicable to floor area ratio (“FAR”), rear yard, and parking, contrary to ZR §§ 33-121, 33-292, 36-21, 43-12, 43-26, and 44-21, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the variance be for five (5) years, to expire on October 19, 2009; valet parking be provided for patrons of the catering establishment for the duration of the variance, and any renewal of the grant contain this condition; all fire safety measures as shown on the BSA-approved plans be installed and maintained; all sound attenuation measures as shown on the BSA-approved plans be installed and maintained; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the above conditions be noted in the certificate of occupancy; a certificate of occupancy be obtained within six (6) months from the date of this grant, by April 19, 2005; no temporary or permanent certificate of occupancy be issued until removal of all Department of Buildings (“DOB”) objections as set forth on the DOB Objection Sheet, dated August 4, 2004; there be no occupancy of the second floor

of the building until a certificate of occupancy is issued; all exiting requirements be as reviewed and approved by the DOB; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on April 13, 2010, under the subject calendar number, the Board amended the October 19, 2004, resolution and extended the term for ten (10) years, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; the term of the grant expire on October 19, 2019; a minimum of 80 off-site parking spaces be provided for patrons of the catering establishment for the duration of the variance, and such parking be located no further than 600 feet from the site, as required by ZR § 36-43; all fire safety measures as shown on the BSA-approved plans be installed and maintained; all sound attenuation measures as shown on the BSA-approved plans be installed and maintained; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by April 13, 2011; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance to expire on October 19, 2019, the applicant seeks a ten- (10) year extension of the term and an extension of time to obtain a certificate of occupancy, which expired on April 13, 2011; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than 30 days after the expiration of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to permit interior alterations to the building; and

WHEREAS, the applicant represents that the interior alterations do not create any new non-compliances nor increase the degree of any non-compliances, the catering hall continues to operate daily from 11:00 a.m. to 10:00 p.m. and remains open until 1:00 a.m. on nights when there is an event at the site; and

WHEREAS, at hearing, the Board raised concerns regarding the owner’s ability to continue to comply with the condition that a minimum of 80 off-site parking spaces be

MINUTES

provided for patrons of the catering establishment for the duration of the variance and such parking be located no further than 600 feet from the site; and

WHEREAS, in response, the applicant provided a parking space rental agreement, entered into on April 25, 2019, for the use of 80 parking spaces located at 2569 Shell Road, Brooklyn, to continue until the catering hall use at the subject site ceases; and

WHEREAS, by letter dated April 22, 2019, the Fire Department stated that the premises have three (3) outstanding violation orders issued by the Fire Alarm Inspection Unit (“FAIU”) and Licensed Public Place of Assembly Unit (“LPPA”) for failure to maintain the fire alarm system; the first violation order was issued on October 21, 2015, and remains outstanding; subsequently, two (2) additional violation orders were issued on May 18, 2018, and February 7, 2019, by FAIU for failure to restore the fire alarm and to comply with the Letter of Defect issued March 23, 2018; and that the Fire Department requests that the Board does not render a decision on the application until a response is heard from the applicant as to when the violation orders will be complied with; and

WHEREAS, by letter dated April 25, 2019, the Fire Department stated that FAIU informed the Department that the subject site had an inspection of their fire alarm system and the violation orders will be dismissed, and the Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, the Board finds that ten- (10) year extension of the term of the variance, originally granted in 2004, extension of time to obtain a certificate of occupancy and amendment to permit interior alterations are appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* § 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated October 19, 2004, as amended through April 13, 2010, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on October 19, 2029, to grant an extension of time to obtain a certificate of occupancy for one (1) year, by April 30, 2020, and permit interior alterations of the building, *on condition* that all work and site conditions shall comply with drawings filed with this application marked “Received April 17, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of the variance shall expire October 19, 2029;

THAT valet parking shall be provided for patrons of the catering establishment for the duration of the variance, and any renewal of the grant contain this condition;

THAT a minimum of 80 off-site parking spaces shall be provided and maintained, at 2569 Shell Road, Brooklyn, for patrons of the subject catering establishment for the

duration of the variance;

THAT all fire safety measures as shown on the BSA-approved plans shall be maintained;

THAT all sound attenuation measures as shown on the BSA-approved plans shall be maintained;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all exiting requirements shall be as reviewed and approved by the DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 208-03-BZ”), shall be obtained within one (1) year, by April 30, 2020;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, April 30, 2019.

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED –125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for adjourned hearing.

509-37-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka

MINUTES

202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

332-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Northern Spots LLC, owner.

SUBJECT – Application June 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and maintenance of an accessory parking facility which expired on February 13, 2015; Waiver of the Board’s Rules. R2A zoning district.

PREMISES AFFECTED – 43-20 Little Neck Parkway, Block 8129, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

149-97-BZ

APPLICANT – Francis R. Angelino, Esq., for Martin A. Gleason Funeral Home, LLC, owner.

SUBJECT – Application August 2, 2018 – Amendment of a previously approved Variance (§72-21) which permitted an accessory open parking lot (UG 7E) for use with a funeral establishment (UG 7B). The amendment seeks to reflect a reduction in the size of the zoning lot and number of parking spaces from 34 spaces to 29; Extension of Term which expired on August 11, 2018. R2A zoning district.

PREMISES AFFECTED – 150-19 11th Avenue, Block 4515, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

85-99-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Silvestre Petroleum Corp., owner; Mobil Oil Corporation, lessee.

SUBJECT – Application March 12, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting, the operation of an automotive service station (Use Group 16B) with an accessory convenience store which is set to expire on June 27, 2020; Waiver of the Board’s Rules to permit the early filing. R6 zoning district.

PREMISES AFFECTED – 1106 Metcalf Avenue, Block 3747, Lot 88, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

197-02-BZ

APPLICANT – Eric Palatnik, P.C., for Nostrand Kings Management, LLC, owner.

SUBJECT – Application January 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Harbor Fitness) which expired on November 26, 2017; Waiver of the Board’s Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for continued hearing.

177-06-BZ

APPLICANT – Law Office of Steven Simicich, for 1840 EMAB, LLC, owner.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) to permit the continued operation of an Automotive Repair Facility (UG 16B) with the sale of cars which expired on April 10, 2017; Amendment to permit the conversion of accessory storage area into an additional automotive service bay and changes to on-site planting; Waiver of the Board’s Rules. C2-2R3-2 zoning district.

PREMISES AFFECTED – 1840 Richmond Terrace, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for decision, hearing closed.

49-12-BZ

APPLICANT – Powerhouse Gym “FLB” Inc., for Laterra, Inc., owner; Powerhouse Gym “FLB” Inc., lessee.

SUBJECT – Application August 8, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Powerhouse Gym) in a portion of an existing one-story commercial building which expired on June 12, 2017; Waiver of the Rules. C2-2R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, Block 6077, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for postponed hearing.

MINUTES

APPEALS CALENDAR

205-15-A thru 214-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129th Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130,131, 132, 133,134, 135,136, 137, 138, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

2017-295-BZ

CEQR #18-BSA-055M

APPLICANT – Law Office of Jay Goldstein, for 129 West 26th Street Development LLC, owner.

SUBJECT – Application November 6, 2017 – Variance (§72-21) to permit the development of a fourteen (14) story, 24,684.5 square foot (10 FAR), mixed-use, commercial ground floor and residential above, contrary to ZR 42-00. M1-6 zoning district.

PREMISES AFFECTED – 128 West 26th Street, Block 801, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 19, 2018, acting on New Building Application No. 123118884, reads in pertinent part:

“Proposed change of use to a residential use, as defined by ZR 12-10, is not permitted as of right in a M1-6 zoning district pursuant to ZR 42-00”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-6 zoning district, the development of a mixed-use commercial and residential building that does not comply with zoning regulations for use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, with continued hearings on February 5, 2019 and then to decision on April 30, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, recommends disapproval of this application, questioning whether this application meets the required findings under ZR § 72-21, requesting that the applicant analyze the financial feasibility of an as-of-right commercial development, noting that residential use would not disrupt the character of the surrounding area, citing concerns with the height of the proposed building with respect to neighborhood character and the minimum variance, noting that the proposed absence of a front setback is consistent with nearby buildings, questioning whether purchase of the subject site with knowledge of the deterioration of the existing building constitutes a self-created hardship; and

WHEREAS, Community Board 4, Manhattan, also

MINUTES

recommends that, should this application be granted, that the new building have a maximum height of 125 feet (approximately 12 stories), rear balconies not be permitted to minimize noise, any roof deck only be for the benefit of the occupants of the proposed building without any eating or drinking establishment on the roof, that no eating or drinking establishment be located at the first story, that no permits for after hour or weekend work be permitted except in emergency, that demolition of the existing building be coordinated with construction at adjacent sites, that monitoring of the adjacent property take place during construction and that insurance protect the adjacent property to cover any construction damage; and

WHEREAS, the subject site is located on the south side of West 26th Street, between Seventh Avenue and Avenue of the Americas, in an M1-6 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 25 feet of frontage along West 26th Street, 99 feet of depth, 2,469 square feet of lot area, was occupied by a five-story commercial building subject to a vacate and demolition order resulting from excavation work at an adjacent site and is currently vacant; and

WHEREAS, the applicant proposes to develop a 14-story, with cellar, mixed-use commercial and residential building with 24,685 square feet of floor area (10.0 FAR) and a front wall height of 148 feet without setback and a building height of 148 feet; and

WHEREAS, the applicant notes that, at the subject site, residential use is not permitted under ZR § 42-00; and

WHEREAS, the applicant states that the subject site is beleaguered by unique physical conditions that create practical difficulties or unnecessary hardship in complying with applicable zoning regulations—namely, the subject site’s narrowness and small size; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, determining that, of 285 lots in the surrounding area, there are 70 lots with widths of 25 feet or less but finding that the subject site is the only small and narrow vacant lot held in single ownership not used in conjunction with adjacent lots; and

WHEREAS, the applicant notes that the above unique physical conditions create practical difficulties or unnecessary hardship because they prevent the development of a building that would accommodate adequate floorplates necessary for commercial or manufacturing use and the required setbacks further constrain the floorplates because of the required elevator core and two means of egress—rendering an as-of-right development functionally obsolete before completion of construction; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that as-of-right development would not result in a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a 14-story, with cellar, commercial building used for retail and offices—would result in a substantial loss on investment but that the proposed mixed-use development with residential use would yield a modest return; and

WHEREAS, in response to questions from the Board at hearing, the applicant provided support of excavation drawings and notes that sloped excavation would increase construction costs above the submitted construction cost estimates, especially in light of additional permit requirements from the New York City Department of Transportation and the presence of an electrical conduit immediately adjacent to the subject site; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant submits that the proposed development is in keeping with the character of the surrounding area; and

WHEREAS, in support of this contention, the applicant supplied an illustrative streetscape rendering indicating that numerous other buildings on the block, including two immediately adjacent to the subject site, have heights of 152 feet and 156 feet with buildings directly across the street that have building heights in excess of 150 feet and that the proposed height of 148 feet without setback is consistent with the built character of the area; and

WHEREAS, furthermore, in response to community concerns and at the Board’s questions at hearing, the applicant reduced the height of the proposed building from 152 feet to 148 feet, removed ledges from the front façade of the proposed building and notes that all construction will proceed in accordance with the New York City Construction Codes as well as best practices for construction site safety; and

WHEREAS, the Board also notes that DOB will ensure that all construction at the site proceeds in a safe and lawful manner, and the applicant has not proposed any eating or drinking establishment for the roof of the subject building, which is instead labeled as accessory to the floors below; and

WHEREAS, additionally, the applicant notes that the rear balconies are financially necessary to offset the proposed dwelling units’ disadvantages compared to other available units in the market and that, given their size and location accessed through the bedroom, the rear balconies are not suited to entertaining; and

WHEREAS, in response to questions from the Board, the applicant notes that the proposed building will feature exposed concrete with concrete stucco over concrete on the side walls and rear balconies; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located;

MINUTES

will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, in response to questions from the Board with respect to vacancy of the subject site, the applicant notes that demolition of the existing building was the direct result of excavation work performed by a third party at an adjacent property that resulted in a vacate and demolition order from DOB; and

WHEREAS, in response to community concerns regarding the site's purchase, purchase of a site does not constitute self-created hardship in and of itself—as specifically provided in the Zoning Resolution; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, in particular, the applicant analyzed a lesser variance scenario—consisting of a 12-story, with cellar, commercial building with a height of 120'-10" used for retail and offices without the required front setback—finding that it also would result in a loss on investment; and

WHEREAS, in response to community concerns, the applicant accordingly notes that a building with a maximum height of 125 feet, unlike the proposed building, would not realize a reasonable return on investment; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA055M, dated April 30, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated February 21, 2018, Landmarks Preservation Commission represents that the proposed project would not result in adverse impacts on architectural or archaeological resources; and

WHEREAS, by letter dated March 29, 2019, the New York City Department of Environmental Protection ("DEP")

states that the February 2019 Remedial Action Plan and Construction Health and Safety Plan are acceptable on condition that the proposed vapor barrier systems shall be used unless an amendment is approved by DEP, that at the completion of the project a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project; that the P.E. certified Remedial Closure Report shall indicate that all remedial requirements have been properly implemented (that is, installation of the vapor barrier, transportation and disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations and 2 feet of DEP-approved certified clean fill or top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt); and

WHEREAS, by letter dated April 4, 2019, DEP states that the proposed project would not result in significant air quality impacts and that the proposed project would not result in any significant noise impacts and the surrounding ambient noise would not have an adverse effect on the proposed project on condition that a window-wall noise attenuation of no less than 31 dBA shall be required along with an alternate means of ventilation while the windows are closed; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-6 zoning district, the development of a mixed-use commercial and residential building that does not comply with zoning regulations for use, contrary to ZR § 42-00; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received April 11, 2019"-Twelve (12) sheets; and *on further condition*:

THAT a window-wall noise attenuation of no less than 31 dBA shall be required along with an alternate means of ventilation while the windows are closed;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2017-295-

MINUTES

BZ”), shall be obtained within four (4) years, by April 30, 2023;

THAT the proposed vapor barrier systems shall be used unless an amendment is approved by DEP;

THAT at the completion of the project a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, and the P.E. certified Remedial Closure Report shall indicate that all remedial requirements have been properly implemented (that is, installation of the vapor barrier, transportation and disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations and 2 feet of DEP-approved certified clean fill or top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt);

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

2017-315-BZ

CEQR #18-BSA-073X

APPLICANT – Eric Palatnik, P.C., for Thomas J. Cannistraci, owner; Strong Pelham Fitness, lessee.

SUBJECT – Application December 12, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Dolphin Fitness Club*) located on the first floor and mezzanine area of the subject building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 2030 Eastchester Road, Block 4218, Lot 9, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 3, 2018, acting on DOB Application No. 220465244, reads in pertinent part:

A physical [culture] establishment is contrary to ZR 73-36, the project must be presented to the court at B. S. & A. to file an application with the

B. S. & A. An official [denial] is required from the filing at the DOB. Each [denial] has a 30 day deadline and must be renewed within that time limit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a M1-1 zoning district, a physical culture establishment (“PCE”) in a portion of the first floor and mezzanine of an existing one-(1) story plus mezzanine commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with a continued hearing and decision on January 15, 2019, reopened on April 30, 2019, for the Board to consider plans that accurately reflected the layout of the PCE, and then decided on that same date; and

WHEREAS, Community Board 11, the Bronx, recommends approval of this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood;

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the east side of Eastchester Road, between Seminole Street and Stillwell Avenue, in an M1-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 75 feet of frontage along Eastchester Road, 99 feet of depth, 5,908 square feet of lot area and is occupied by an existing one-(1) story plus mezzanine commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the subject PCE occupies 5,908 square feet of floor area on the first floor with open workout areas, men's and women's locker rooms with bathrooms and showers, and a reception area; and 2,458 square feet of floor area on the mezzanine with exercise areas and a bathroom; and

WHEREAS, the PCE has operated since 1999 as "Dolphin Fitness," with the following hours of operation:

Monday through Friday from 5:00 a.m. to 11:00 p.m.; and, Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, although the building has no residential uses within, the applicant states that all PCE windows will be sound attenuated double-glazed glass; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is an established business; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement and weight reduction; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE is located in a commercial building on a street characterized by other commercial and manufacturing uses; and

WHEREAS, the applicant states that fire extinguishers will be provided in the PCE as well as exit signs at each exit and at all changes of direction in corridors; and

WHEREAS, by letter dated November 29, 2018, the Fire Department objected to the application and requested an adjournment in order for Fire Department personnel to inspect the sprinkler system at the premises; according to Fire Department records and DOB, there has never been a filing for a sprinkler system; in the photograph provided by the applicant to the Board, one picture showing a sprinkler line appears to have an illegal cap instead of a sprinkler head; the Department's Licensed Public Place of Assembly ("LPPA") unit has visited the site and issued a violation order (E463956) for operating without approvals from the DOB; the LPPA unit has been notified of this filing with the Board and will continue to visit the site for compliance; with an occupant load of over 300 persons, as per 2014 BC Section 907.2.1, a fire alarm system is required to be installed; a fire alarm application has been filed and is currently disapproved; and, once a decision is rendered in favor of the applicant, the Department will inform the plan examination to approve the fire alarm application; and

WHEREAS, by letter dated December 31, 2018, the Fire Department stated no objection to the application and confirmed that, with respect to this application for a PCE to occupy the first floor and mezzanine space with an occupant load of 295, an application has been filed with the DOB for the change of use (Alt. I 220465244), no Public Assembly (PA) application has been filed to date; the LPPA unit has

MINUTES

issued a violation order E463956 to obtain a Certificate of Operation permit and will continue to monitor this site; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the 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. 18BSA073X, dated December 13, 2017; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the first floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a M1-1 zoning district, the operation of a physical culture establishment on a portion of the first floor and mezzanine of an existing one- (1) story plus mezzanine commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 27, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 15, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT a place of assembly permit shall be obtained;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2017-315-BZ”), shall be obtained within one (1) year, by January 15, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

2018-21-BZ

CEQR #19-BSA-098K

APPLICANT – Law Office of Lyra J. Altman, for Saeed Azarfar, owner.

SUBJECT – Application February 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area, open space and lot coverage) and ZR §23-461(a) (required side yard). R3-2 zoning district.

PREMISES AFFECTED – 1773 East 22nd Street, Block 6805, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 22, 2018, acting on Department of Buildings (“DOB”) Application No. 321504886, reads in pertinent part:

1. Proposed enlargement [. . .] non-complian[t] [. . .] with respect to floor area ratio, which is contrary to ZR Section 23-142;
2. Proposed enlargement [. . .] non-complian[t] [. . .] with respect to open space and lot coverage, which is contrary to ZR Section 23-142;
3. Proposed enlargement results in one side yard less than 5'-0", which is contrary to ZR Section 23-461(a); and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the enlargement of a single-family detached dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, open space and side yards, contrary to ZR §§ 23-142 and 23-461(a); and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on March 19, 2019, and April 30, 2019, and then to decision on that date; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

MINUTES

WHEREAS, the site has approximately 40 feet of frontage along East 22nd Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar single-family detached dwelling containing 1,653 square feet of floor area (0.41 FAR), 76 percent of open space (3,028 square feet), 24 percent of lot coverage (972 square feet), a rear yard with a depth of 49'-7-1/4", two (2) side yards with widths of 3'-11-1/2" and 13'-9-1/4", and a detached concrete block garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear*

lot line; and

- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to both vertically and horizontally enlarge the building, resulting in a three- (3) story plus cellar one- (1) family detached dwelling with 3,993 square feet of floor area (1.0 FAR), 59 percent of open space (2,349 square feet of open space), 41 percent of lot coverage (1,652 square feet), a rear yard with a depth of 32 feet, two (2) side yards with widths of 3'-11-1/2" and 9'-1/2", and detached concrete block garage in the rear; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 972 square feet to 1,652 square feet, the second floor from 681 square feet to 1,431 square feet and create a third floor with 907 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.6 is permitted (2,400 square feet) (a maximum FAR of 0.5 plus a maximum 20% increase in floor area located directly under a sloping roof), a minimum of 65 percent open space is required (2,600 square feet), a maximum of 35 percent lot coverage is permitted (1,400 square feet) and two (2) side yards, each with minimum widths of five (5) feet and a minimum total combined width of 13 feet are required pursuant to ZR §§ 23-142 and 23-461(a); and

WHEREAS, the proposed enlargement includes a

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

vertical and horizontal extension of the existing non-complying side yard, and the applicant represents that, pursuant to a 1929 Belcher Hyde Map of the immediate area including the subject site and provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises within an R3-2 zoning district (the “Study Area”) concluding that, of the 126 qualifying residences, 70 residences (56 percent) have an FAR between 0.51 and 0.7, ranging from 0.52 to 0.7, and 19 residences (15 percent) have an FAR of more than 0.7, ranging from 0.71 to 1.58; and

WHEREAS, with regards to lot coverage and open space, the applicant demonstrated that, within the Study Area, 96 residences (76 percent) have a lot coverage greater than 35 percent, ranging from 36 percent to 57 percent, and 74 residences (59 percent) have a lot coverage of 41 percent or greater; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA098K dated February 14, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R3-2 zoning district, the enlargement of a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot coverage, open space and side yards, contrary to ZR §§ 23-142 and 23-461(a); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “April 11, 2019”-

Eighteen (18) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.0 (3993 square feet of floor area), a minimum of 59 percent of open space (2,349 square feet of open space), a maximum of 41 percent of lot coverage (1,652 square feet), and two (2) side yards with minimum widths of 3’-11-1/2” and 9’-1/2”, as illustrated on BSA-approved plans;

THAT plans submitted to the Department of Buildings shall be subject to full plan examination and review and shall not be self-certified;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by April 30, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-21-BZ”) shall be obtained within four (4) years, by April 30, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

2018-194-BZ

CEQR #19-BSA-066K

APPLICANT – Law Office of Lyra J. Altman, for IRS LLC by Isaac Stern, owner.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) to permit the conversion and enlargement of a two-family home to a single-family home contrary to ZR §23-141 (Floor Area Ratio and Open Space). R2 zoning district.

PREMISES AFFECTED – 2317 Avenue K aka 1086 East 24th Street, Block 7605, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough

MINUTES

Commissioner, dated November 15, 2018, acting on Department of Buildings (“DOB”) Application No. 321754669, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed Floor Area Ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed Open Space Ratio is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), and open space ratio (“OSR”), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 30, 2019, and then to decision on that date; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Avenue K and East 24th Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along Avenue K, 100 feet of frontage along East 24th Street, 6,000 square feet of lot area, and is occupied by a two (2) story plus cellar two- (2) family detached dwelling containing 3,504 square feet of floor area (0.58 FAR), an OSR of 1.21 (4,238 square feet of open space), a front yard on Avenue K with a depth of 13’-1-1/4” and a front yard on East 24th Street with a depth of 15’-9-3/4”, two (2) side yards with widths of 25’-2-3/4” and 11’-1-1/4”, and a detached garage in the northern side yard; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of

Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single-* or *two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building’s non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached two- (2) family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to convert and both vertically and horizontally enlarge the building, resulting in a two- (2) story plus attic and cellar one- (1) family dwelling with 6,020 square feet of total floor area (1.0 FAR), an OSR of 0.58 (3,479 square feet of open space), a front yard on Avenue K with a depth of 13'-1-1/4" and a front yard on East 24th Street with a depth of 15 feet, two (2) side yards with widths of 21 feet and five (5) feet, and a detached garage in the northern side yard; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,762 square feet to 2,453 square feet, the second floor from 1,742 square feet to 2,420 square feet, and the attic from 0 square feet to 1,147 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (3,000 square feet) and a minimum OSR of 1.5 (4,500 square feet of open space based on a complying 0.5 FAR) are required pursuant to ZR § 23-141; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying front yard along Avenue K and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying front yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 96 qualifying residences, 84 residences (88 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.25, and 14 residences (15 percent) have an FAR of 1.0 or greater; and

WHEREAS, with regards to open space ratio, the applicant demonstrated that, within the Study Area, 91 residences (95 percent) have an OSR less than 1.5, ranging from 1.45 to 0.38, and 16 residences (17 percent) have an OSR of 0.59 or less; and

WHEREAS, at hearing, the Board raised concern regarding the proposal of floor area in excess of 1.0 FAR (6,000 square feet) and while the Board notes herein that the plans submitted by the applicant do not include all floor area deductions available pursuant to applicable provisions of the Zoning Resolution, the Board confirms that the maximum FAR permitted pursuant to this approval is 1.0 (6,000 square feet of floor area); and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA066K, dated December 6, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "April 11, 2019"-Eighteen-(18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.0 (6,000 square feet of total floor area, excluding all floor area deductions permitted under the applicable provisions of the Zoning Resolution) and a minimum open space ratio of 0.59 (3,547 square feet of open space), as illustrated on BSA-approved plans;

THAT the height and front setback of the subject building shall be subject to verification of their compliance with the Zoning Resolution by the Department of Buildings;

THAT this approval is limited to waiving zoning requirements for the subject site relating to floor area ratio and open space ratio only;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by April 30, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-194-BZ"), shall be obtained within four (4) years, by April 30, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other

MINUTES

jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – Special Permit (§73-126) to permit a two-story with cellar ambulatory diagnostic or treatment health care facility (UG 4) contrary to ZR §22-14(A). R3X (Special South Richmond Development District) (Lower Density Growth Management Area).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

2017-233-BZ

APPLICANT – Sheldon Lobel, P.C., for 446-448 Park Realty Corp., owner.

SUBJECT – Application August 8, 2017 – Variance (§72-21) to allow for the development of six-story plus cellar (UG 2) residential building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 446-448 Park Avenue, Block 1898, Lot(s) 37 & 38, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

2017-273-BZ

APPLICANT – Law Office of Lyra J. Altman, for Carol Greenberger & Sidney Greenberger, owners.

SUBJECT – Application September 27, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 975 East 24th Street, Block 7588, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M., for adjourned hearing.

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board's Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for adjourned hearing.

2018-48-BZ

APPLICANT – Philip L. Rampulla, for Joseph Marino, owner.

SUBJECT – Application March 30, 2018 – Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 5205 Hylan Boulevard, Block 6499, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 30, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDER

2018-200-BZ

CEQR #19-BSA-068M

APPLICANT – Victor Han Architect P.C., for Robert C. Quinlan, owner; Renzo Gracie, lessee.

SUBJECT – Application December 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Renzo Gracie Upper West Side – Mixed Martial Arts Studio) located at the sub-cellar level of a 7-story mixed use building contrary to ZR §32-10. C4-6A Upper West Side/Central Park West Historic District.

PREMISES AFFECTED – 100 West 72nd Street, Block 1143, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated January 23, 2019, acting on Department of Buildings (“DOB”) Application No. 122445746, reads in pertinent part:

Proposed physical culture establishment located at sub-cellar level is not permitted as of right in a C4-6A Zoning District. This is contrary to section 32-10 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district, a physical culture establishment (“PCE”) on portions of the sub-cellar of an existing seven- (7) story plus cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 30, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the southwest corner of West 72nd Street and Columbus Avenue, within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 72nd Street, 102 feet of frontage along Columbus Avenue, 5,108 square feet of lot area and is occupied by an existing seven- (7) story plus cellar and sub-cellar mixed-use residential and commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 2016, when, under BSA Cal. No. 188-15-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE, by Miccass Physical Therapy, PC and Momentum Fitness, LLC, with Miccass Physical Therapy, PC, sub-leasing a portion of the space to Momentum Fitness, LLC, on the cellar level of the subject building on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant be for ten (10) years, expiring on May 3, 2026; the hours of the PCE be limited to Monday through Friday 8:00 a.m. to 8:00 p.m., Saturday 8:00 a.m. to 3:00 p.m. and Sunday 8:00 a.m. to 2:00 p.m.; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum 3’-0” wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm—including manual pull stations at each required exit, local audible and visual alarms, area smoke detector and a connection to an FDNY-approved central station—be installed in the entire PCE space; all interior partitions and exists shall be as approved by DOB; Local Law 58/87 be complied with as approved by DOB; 7.5mm-thick rubber flooring be installed within the areas designated for circuit and cardiovascular training; 22.5 millimeter-thick rubber flooring be installed within the area designated for free weight uses; the conditions appear on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by May 3, 2021; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

MINUTES

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and

community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 4,600 square feet of floor space in the sub-cellar with a training mat area, men's and women's locker rooms with bathrooms and showers, and an office; and

WHEREAS, the PCE began operation in April 2019, as "Renzo Gracie Upper West Side, LLC," with the following hours of operation: Monday through Saturday, 7:00 a.m. to 10:00 p.m., and closed on Sunday; and

WHEREAS, the applicant states that the PCE is separated from residential uses within the subject building by two (2) floors, is located immediately below another PCE, does not include any exercise equipment, does not use any amplified music, and the operator does not anticipate the PCE use to cause any disturbance to neighboring residential uses; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing mixed-use building, directly below another PCE tenant, keeping with the existing uses already within the subject site, and no storefront or any portion of the subject PCE is visible from street level; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for martial arts; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is consistent with surrounding uses and maintains an entrance for the PCE separate from the entrance to the residential portion of the subject mixed-use building; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system are installed and maintained within the PCE space; and

WHEREAS, by letter dated April 26, 2019, the Fire

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

Department states that these premises are protected by a sprinkler, standpipe and fire alarm systems that have been inspected and tested satisfactorily to Fire Department rules and regulations, and that the Fire Department has no objection to the Board rendering a decision on this application; and

WHEREAS, by Certificate of No Effect (XCNE-19-28046), issued July 6, 2018, the Landmarks Preservation Commission approved work associated with the PCE use as having no effect on the significant protected features of the subject building; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-068M, dated December 27, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the sub-cellar, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, the operation of a physical culture establishment on a portion of the sub-cellar of an existing seven- (7) story plus cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 28, 2019”- Seven (7) sheets and “Received April 26, 2019”- One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system and sprinkler shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be

provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-200-BZ”), shall be obtained within one (1) year, by April 30, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

2018-140-BZ

APPLICANT – Eric Palatnik, P.C., for Cohancy Realty LLC, owner.

SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.

PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M. for continued hearing.

2018-149-BZ

APPLICANT – Alfonse Duarte for Q.S.A.C. Inc., owner.

SUBJECT – Application September 17, 2018 – Special Permit (§73-621) to permit a one-story extension to a one family dwelling contrary to ZR §23-142) (Floor Area Ratio). R3-1 zoning district.

PREMISES AFFECTED – 230-48 146th Avenue, Block 13465, Lot 35, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M. for postponed hearing.

MINUTES

2018-164-BZ

APPLICANT – Pryor Cashman LLP, for Franchise Realty Interstate Corp., owner.

SUBJECT – Application October 17, 2018 – Special Permit (§73-243) to permit the legalization of an accessory drive-through to an eating and drinking establishment (UG 6) (*McDonald's*) contrary to ZR §32-15. C1-2/R4 zoning district.

PREMISES AFFECTED – 72-71 Kissena Boulevard, Block 6805, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 25, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 17, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|--------------------------|-----|
| DOCKET | 379 |
| CALENDAR of June 4, 2019 | |
| Morning | 380 |
| Afternoon | 380 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, May 7, 2019**

Morning Calendar381

Affecting Calendar Numbers:

| | |
|---------------------------|---|
| 771-76-BZ | 375 Pearl Street, Manhattan |
| 118-14-BZ | 1891 Richmond Road, Staten Island |
| 316-73-BZ | 31-02 68 th Street, Queens |
| 126-93-BZ | 1225 East 233 rd Street, Bronx |
| 303-12-BZ | 1106-1108 Utica Avenue, Brooklyn |
| 62-13-BZ | 2703 East Tremont Avenue, Bronx |
| 163-14-A thru 165-14-A | 502, 504 and 506 Canal Street, Manhattan |
| 162-15-A thru 164-15-A | 139-48 88 th Road, 88-30/34 144 th Street, Queens |
| 165-15-A & 166-15-A | 88-36/38 144 th Street, Queens |
| 2018-23-A & 2018-24-A | 29 and 31 Herbert Street, Staten Island |
| 2018-22-A | 255 18 th Street, Brooklyn |
| 2018-125-A | 495 Wild Avenue, Staten Island |
| 2016-4240-BZ | 1231 Third Avenue, Manhattan |
| 2017-301-BZ | 467 Marcy Avenue, Brooklyn |
| 2017-313-BZ | 853 Kent Avenue, Brooklyn |
| 2016-1208-BZ | 300 East 64 th Street, Manhattan |
| 2017-288-BZ | 17-10 Whitestone Expressway, Queens |
| 2018-116-BZ | 1982 Utica Avenue, Brooklyn |

Afternoon Calendar396

Affecting Calendar Numbers:

| | |
|-------------|------------------------------------|
| 2017-261-BZ | 527 East New York Avenue, Brooklyn |
| 2018-136-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-137-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-145-BZ | 251-73 Jericho Turnpike, Queens |
| 2018-180-BZ | 1441G South Avenue, Staten Island |

Corrected Calendar398

Affecting Calendar Numbers:

| | |
|-------------|--|
| 2017-302-BZ | 174A & 176A Beach 111 th Street, Queens |
|-------------|--|

DOCKETS

New Case Filed Up to May 7, 2019

2019-84-BZ

107-18 70th Road, Block 3239, Lot(s) 0038, Borough of **Queens, Community Board: 6.** Special Permit (§73-36) to permit the operation of a physical culture establishment (Orangetheory Fitness) to be located on a portion of the first floor of a one-story commercial building contrary to ZR §32-10. C4-4A Special Forest Hills District. 6 district.

2019-85-A

172-18 Jamaica Avenue, Block 10213, Lot(s) 0007, Borough of **Queens, Community Board: 4.** Appeal of a New York City Department of Buildings' (the "DOB") denial of a variance from 2014 New York City Building Code (the "2014 Code") § 3002.4.2 for an elevator installed at the newly constructed building. C2-4/R5 and R6A Downtown Jamaica Special Purpose District. C2-4/R5/R6A/DJ district.

2019-86-BZ

2702 Avenue N, Block 7681, Lot(s) 0046, Borough of **Brooklyn, Community Board: 14.** Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio. R2 zoning district. R2 district.

2019-87-BZ

2624 Avenue M, Block 7662, Lot(s) 0056, Borough of **Brooklyn, Community Board: 14.** Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio. R2 zoning district. R2 district.

2019-88-BZ

31-57 31st Street, Block 00613, Lot(s) 7502, Borough of **Queens, Community Board: 1.** Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Orangetheory Fitness) on a portion of the first floor of a seven-story mixed commercial and residential building contrary to ZR §32-10. C4-3 zoning district. C4-3 district.

2019-89-A

36 West 66th Street, Block 1118, Lot(s) 0045, Borough of **Manhattan, Community Board: 7.** Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District. C4-7, R8 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JUNE 4, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 4, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application February 6, 2019 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2017. C2-2/R4 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

156-73-BZ

APPLICANT – The Design Alliance/Gary Maranga, for Albert Einstein College of Medicine, owner.

SUBJECT – Application June 28, 2018 – Extension of Term of a previously approved variance made pursuant to Section 60(3) of the Multiple Dwelling Law, permitting the use of Transient parking for the unused and surplus tenants' space in the required accessory garage of a multiple dwelling which expires on June 26, 2013. R6 and R4 zoning districts.

PREMISES AFFECTED – 1975 Eastchester Road, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #2BX

21-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co., owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application November 1, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2017; Waiver of the Board's Rules. M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.

SUBJECT – Application January 8, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home which expires on January 30, 2019. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

REGULAR MEETING JUNE 4, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 4, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-191-BZ

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 7, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

771-76-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Intergate Manhattan LLC, owner.

SUBJECT – Application September 10, 2018– Amendment of a previously approved Variance (§72-21) that permitted the installation of an illuminated sign that exceeded the surface area along a district boundary and the height above curb level. The Amendment seeks to modify the previously approved sign to permit a digital sign and the new sign will be able to display messages for any principal use on the zoning lot, as opposed to a single principal use on the zoning lot. C6-4 zoning district.

PREMISES AFFECTED – 375 Pearl Street, Block 114 Lot(s) 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, this is an application under ZR §§ 72-01 and 72-22 for an amendment to a variance, previously granted by the Board in 1977, to permit, over 500 feet above curb level on a 32-story commercial building, the substitution of an existing backlit accessory pin-mounted sign that reads “Verizon” with a new illuminated digital sign with changeable copy identifying at 120-second intervals the various tenants of the subject building; and

WHEREAS, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2019, and then to decision on May 7, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application on condition that the proposed sign’s display interval be increased to at least 60–120 seconds with a fade in and fade out interval longer than 6 seconds, that the proposed sign should perhaps be located higher on the building and that the applicant return to Community Board 1 within two (2) years to discuss and

consider adjustments to the proposed sign’s light emission, image intervals and other mechanical controls should there be any complaints; and

WHEREAS, by letter dated December 17, 2018, the Department of City Planning (“DCP”) submitted testimony about this application, citing “serious concerns with the proposal”; specifically, DCP notes that the proposed sign would have the ability to display dynamic, unpredictably changing content and to display a high level of illumination in the form of a significantly brighter 1,000-square-foot video screen utilizing technology that did not exist decades ago—unlike the existing sign, which features static, backlit symbols with light muted by translucent plastic panels; and

WHEREAS, additionally, DCP states that there is no similarly styled digital screen with changeable copy situated atop a prominent tower anywhere else in the City; that tower-top signs customarily take the form of a static series of symbols related to the primary tenant of a building instead of relating changeable copy to a series of tenants located within a building; that the proposed sign would be clearly visible from the surrounding area, including public spaces and residential neighborhoods in Manhattan and Brooklyn, the East River and nearby arterial highways, roadways and bridges; and that circumstances have changed with respect to the character of the surrounding area since the Board’s original grant of the variance in 1977, particularly the Brooklyn waterfront, which was formerly an underutilized industrial area but has since been revitalized with a vibrant mix of residential, commercial and open public uses; and

WHEREAS, a resident of the surrounding area with direct visibility of the existing sign at the subject site appeared in opposition to this application, citing concerns with the ability of this application to meet the findings under ZR § 72-21 and noting the dramatic change in the proposed sign from the existing sign; and

WHEREAS, the subject site is located on the block bounded by Pearl Street, Avenue of the Finest and Madison Street, in a C6-4 zoning district, in Manhattan; and

WHEREAS, the site has approximately 500 feet of frontage along Pearl Street, 520 feet of frontage along Avenue of the Finest, 350 feet of frontage along Madison Street, 111,868 square feet of lot area and is occupied by a six-story community-facility building used as a high school and a 32-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1977, when, under the subject calendar number, the Board granted a variance to permit the installation of an illuminated accessory sign—specifically, a backlit logo for applicant and vendee in possession New York Telephone Company with approximately 1,018 square feet of surface area—over 500 feet above curb level on the existing “32-story telephone structure” and in excess of the maximum permitted surface area for a sign located within 100 feet of a street line of a street adjoining a residence district, contrary to ZR §§ 32-655 and 32-67, on condition that all work shall substantially conform to the Board-approved drawings; and

MINUTES

WHEREAS, by letter dated September 5, 2002, the Board approved minor modifications to the Board-approved drawings to permit the replacement of the illuminated accessory sign with a different emblem—the logo for Verizon—that reduced the surface area of the approved sign from 1,018 square feet to 1,015 square feet but maintained its character as a non-flashing static sign; and

WHEREAS, by letter dated October 4, 2016, the Board stated that it had no objection to the installation of additional accessory signs at the subject site on condition that the Department of Buildings (“DOB”) ensure their compliance with all applicable zoning regulations; and

WHEREAS, by letter dated May 24, 2018, the Board denied a request to approve a new illuminated sign with a digital display and changeable copy as substantially compliant with the 1977 variance grant, citing concerns that the proposal may disturb the original variance findings; and

WHEREAS, the applicant now seeks to amend the variance to allow the substitution of the existing pin-mounted backlit Verizon sign with an illuminated sign with a digital display and continuously changing copy; and

WHEREAS, the applicant states that the proposed sign is an illuminated accessory sign to be located at a height of 541’-5” above curb level with a surface area of 1,018 square feet; and

WHEREAS, the applicant states that the only difference between the proposed sign and the existing sign is an upgrade in technology; and

WHEREAS, the applicant states that the proposed sign would operate with 120 seconds of static copy followed by a 10-second change to the subsequent copy and submitted a DOB determination that the proposed sign is accordingly not a “flashing” sign, *see* ZR § 12-10; and

WHEREAS, accordingly, the proposed sign would change copy approximately 665 times per day—or 4,652 times per week and 242,585 times per year; and

WHEREAS, the applicant states that the proposed sign would allow no more than 10 tenants in the subject building to display copy on the proposed sign on a rotating basis and that the property owner would require leases to have terms of two (2) years; and

WHEREAS, although the applicant seeks to use the proposed sign to display changing copy identifying occupants of the subject building, which is no longer solely occupied by a city utility as described in the 1977 variance resolution, none of whom have control over the entirety of the subject building, the applicant asserts that both the existing sign and the proposed sign are defined as “signs” and that this proposal does not change the status of the proposed sign as an “accessory use,” *see* ZR § 12-10; and

WHEREAS, however, the Zoning Resolution vests the Board with wide discretion under ZR § 72-21 and authorizes the Board to prescribe conditions and safeguards to address a variance’s potential adverse effects under ZR § 72-22, so the Board’s review of this application need not be confined to the standards applicable to as-of-right construction; and

WHEREAS, the applicant states that the proposed sign

does not disturb any of the findings under ZR § 72-21 for the following reasons: regarding the (a) finding, neither the subject site nor the subject building have changed since 1977 when the original variance was granted; it is impossible to determine to what extent the proposed sign would be inconsistent with a finding of financial hardship set forth in the (b) finding; regarding the (c) finding adjacent zoning districts have neither been rezoned nor developed with new buildings since 1977, particularly any residential buildings above 175 feet in height, and the proposed sign would not negatively impact the surrounding neighborhoods, including neighborhoods along the Brooklyn waterfront, rather, it reflects an aesthetic improvement and a technological upgrade; regarding the (d) finding, any hardship is inherent in the subject site, not created by the owner or its predecessor in title; and, because the proposed sign would not require additional zoning waivers, the proposed sign still reflects the minimum variance necessary as set forth in the (e) finding; and

WHEREAS, with respect to ZR § 72-21(b), the Board questions whether the changed relationship between the proposed sign and the subject building would implicate the Board’s finding (the preclusion of any “reasonable possibility” of a “reasonable return”) and expresses concern that the additional income generated by the proposed sign would create a windfall by promoting an extraordinary corporate opportunity for the property owner to increase the value of leases—a concern that can only be addressed by presenting dollars-and-cents proof, which the applicant has not supplied; and

WHEREAS, with respect to ZR § 72-21(c), the Board questions whether the changed character of the proposed sign from an illuminated sign—in the form of an emblem with non-flashing backlighting and without changeable copy—to a new illuminated sign with a digital display and continuously changing copy would disturb the Board’s finding (“not alter[ing] the essential character of the neighborhood” or “substantially impair[ing] the appropriate use or development of adjacent property” or “be[ing] detrimental to the public welfare”); and

WHEREAS, the Board notes that the proposed sign would be visible from arterial highways, including the Brooklyn Bridge and the Manhattan Bridge, and potentially from residential towers in the immediate vicinity; and

WHEREAS, the Board further notes that decades ago DOB issued policy notices characterizing static, backlit emblems as non-sign “architectural features”—reflecting the view that static, backlit tower-top emblems were architecturally integral to the design of a building; and

WHEREAS, specifically, on September 5, 1991, DOB issued a memorandum regarding symbols, noting that “[m]any buildings in New York have distinctive features including logos which enhance and symbolize the architectural whole of the building and add to the diversity of the skyline. Therefore, where a symbol on a building owned and occupied by a corporation is considered to be an integral part of and is closely identified with the architecture

MINUTES

of the building, such symbol, upon review of the Borough Commissioner, may be deemed not to be a sign and shall not be subject to the sign regulation of the Zoning Resolution”; and

WHEREAS, on July 18, 1995, DOB issued a follow-up memorandum on illuminated logos, determining that “[l]ogos which are symbols . . . may not be internally illuminated. To do so, would place them in the same category as signs. However, if indirect lighting were to reflect off the logos as part of the architectural features of the building, the sign regulations of the Zoning Resolution would not be applicable”; and

WHEREAS, on December 9, 1996, DOB issued a Technical Policy and Procedure Notice on distinctive architectural features, which allowed symbols to remain exempt from sign regulations under certain circumstances but changed the manner in which said applications would be reviewed; and

WHEREAS, although the Board later overturned DOB’s interpretation in *388 Greenwich Street, Manhattan*, BSA Cal. No. 152-97-A (June 16, 1998), and clarified that tower-top emblems—like the Verizon and New York Telephone Company logos at the subject site—are subject to the Zoning Resolution’s sign regulations, the Board’s original grant of the variance in 1977 and subsequent approval of the replacement emblem in 2002 are both consistent with the view that tower-top emblems constitute architectural design features; and

WHEREAS, however, the Board would not consider the proposed sign a similar architectural feature in the proposed context; and

WHEREAS, evidence provided by the applicant indicates that the proposed sign would be capable of emitting approximately 6,000 nits (or 20,000 lumens), and the Board notes that the proposed sign, by virtue of its digital display, would increase the brightness nearly tenfold over the existing pin-mounted and backlit Verizon sign to enable visibility of the changing copy during daylight hours and that these increased light emissions would then be reflected against fog and clouds to produce a glow around the subject building; and

WHEREAS, the Board states that the proposed increase in lumens is a significant change in the design of the proposed sign compared to what had been approved in 1977 and by letter of substantial compliance in 2002; hence, such a request is not appropriately before the Board as an “amendment” to an existing variance under Section 1-07.1(a) of the Board’s Rules but should be submitted as a new variance application; and

WHEREAS, in response to questions from the Board about the practicability of monitoring use of the proposed sign as an accessory sign, the applicant notes that the proposed sign’s content management system includes the ability to produce on-demand “proof of play” reports detailing the specific play counts of displayed content and that the proposed sign’s display manufacturer can provide on-demand reports about brightness levels at requested

times; and

WHEREAS, the Board expresses skepticism about the practicability of these suggestions, especially given that the applicant is proposing an entirely new monitoring and enforcement scheme that would require DOB to constantly request and review reports, which are generated on demand, and comparing the reports to the numerous tenants in the building (to ensure the proposed sign would not be used as an advertising sign)—notwithstanding that the roster of tenants in the building would be continuously changing, rendering any tracking efforts a fruitless endeavor; and

WHEREAS, the Board also notes that the proposed sign’s technology presents significantly different challenges with respect to technical malfunctions: according to testimony provided by the applicant’s consultant, if a lightbulb on the existing Verizon sign malfunctions, part of the existing Verizon sign ceases to be backlit; on the other hand, with a software or other technical malfunction, part or all of the proposed sign could display constantly flashing video noise similar to a snow-flickering television screen; and

WHEREAS, the Board also notes the applicant’s lack of clarity as to which 10 tenants in the subject building would be allowed access to the proposed sign and how much space each tenant would occupy; and

WHEREAS, the applicant explained at hearing that sign-maintenance personnel could be on call 24 hours per day, every day of the week, to service the proposed sign; however, the Board questions whether this would constitute a sufficient safeguard to prevent a sporadically recurring visual blight on the City’s skyline and notes the changed character of a technical malfunction from the approved existing Verizon sign (less light) to the proposed sign (erratic, flashing light); and

WHEREAS, with respect to ZR § 72-21(e), the Board questions whether the proposed sign, presenting a potential economic windfall for the property owner, would constitute the “minimum variance necessary” without dollars-and-cents proof that the existing sign is no longer sufficient and why the applicant proposes to increase the surface area of the proposed sign from the existing surface area of 1,015 square feet; and

WHEREAS, notwithstanding the foregoing and notwithstanding the Board’s concerns at hearing, the applicant has maintained throughout the course of hearing that the Board may not request additional information with respect to the ZR § 72-21 findings where no additional waivers are sought; however, the Board notes, for instance, that it frequently requests dollars-and-cents proof for applications seeking to modify the number of dwelling units in a residential building previously approved by variance, and that none of the amendment applications referred to by the applicant appear to involve the wholesale replacement of a structure as herein proposed; and

WHEREAS, the Board further notes that its review and approval of proposed modifications to variances prevent windfalls and ensure continued adherence to the City’s well-

MINUTES

considered zoning plan “so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, ultimately, the applicant’s proposal is not appropriately filed as an “amendment” under Section 1-07.1(a) of the Board’s Rules when it would implicate many, if not all, of the findings under ZR § 72-21 and would necessitate the consideration and imposition of significant additional safeguards and conditions under ZR § 72-22; and

WHEREAS, instead, this application is major in scope and must be filed in accordance with Section 1-05.1 of the Board’s Rules as a new variance or, perhaps, a “major amendment” along with substantial evidence that the proposed sign meets each and every finding under ZR § 72-21, *see* Rule § 1-07.1(a)(1); and

WHEREAS, nothing herein prevents the applicant from maintaining the existing illuminated accessory sign, from seeking an amendment to allow its replacement with a different emblem that maintains its non-flashing backlighting without changeable copy in a form similar to the existing sign or from reverting the subject site to as-of-right conformity with the Zoning Resolution’s sign regulations; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the requested amendment is not appropriate and that the applicant has not substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that this application shall be and it hereby is *denied*.

Adopted by the Board of Standards and Appeals, May 7, 2019.

118-14-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Mangone Developers Corp., owner.

SUBJECT – Application March 28, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a three (3) story, sixteen (16) unit condominium building contrary to use regulations which expired on March 3, 2019. R1-2, R3X-NA-1 zoning district.

PREMISES AFFECTED – 1891 Richmond Road, Block 895, Lot(s) 61, 63, 65, 67, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the construction of a

three- (3) story multiple dwelling—for persons 55 years of age or older (Use Group 2) with 16 dwelling units and 36 accessory parking spaces—and expired on March 3, 2019; and

WHEREAS, a public hearing was held on this application on May 7, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Richmond Road, between Hunter Avenue and Hull Avenue, partially within an R1-2 zoning district and partially within an R3X zoning district and in the Special Natural Area District (NA-1), on Staten Island; and

WHEREAS, the site is comprised of five (5) contiguous tax lots having a total of approximately 538 feet of frontage along Richmond Road, 57,862 square feet of lot area (13,500 square feet within the R1-2 zoning district and 44,362 square feet within the R3X district), and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site March 3, 2015, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a three- (3) story multiple dwelling for persons 55 years of age or older (Use Group 2) with 16 dwelling units and 36 accessory parking spaces on condition that any and all work substantially conform to drawings as they apply to the objections filed with the application; the parameters of the building and site be as follows: 28,392 square feet of floor area (0.49 floor area ratio (“FAR”)), 16 dwelling units, a minimum front yard depth of ten (10) feet, one (1) side yard with a width of 25 feet, one (1) side yard with a width of 260 feet, a minimum rear yard depth of 30 feet, a maximum building height of 40 feet and 36 parking spaces, as illustrated on the BSA-approved plans; all required NYC City Planning Commission (“CPC”) approvals be obtained prior to the issuance of the Department of Buildings (“DOB”) permit; the applicant forward a copy of the CPC-approved plans to BSA prior to applying for the DOB permit; the occupancy of the building be limited to persons 55 years of age or older; the conditions be listed on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by March 3, 2019; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant submits that the

MINUTES

commencement of construction at the site has been delayed due issues connected to obtaining a permit for a proposed retaining wall at the site, which DOB required to be filed as part of the subject DOB job application; and

WHEREAS, the applicant represents that CPC approval was obtained on November 30, 2016; a builders pavement plan was approved by the New York City Department of Transportation on February 22, 2017; New York City Department of Storm and Sanitary Sewers approval was obtained on June 1, 2017, and the applicant anticipates it will take five (5) months to complete the permitting process with DOB and 36 months to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that a four (4) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated March 3, 2015, so that as further amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to March 3, 2023, *on condition*:

THAT substantial construction shall be completed, pursuant to ZR § 72-23, by March 3, 2023, as evidenced by an inspection and determination by the Department of Buildings;

THAT the parameters of the building and site shall be as follows: 28,392 square feet of floor area (0.49 FAR), 16 dwelling units, a minimum front yard depth of ten (10) feet, one (1) side yard with a width of 25 feet, one (1) side yard with a width of 260 feet, a minimum rear yard depth of 30 feet, a maximum building height of 40 feet and 36 parking spaces, as illustrated on the BSA-approved plans;

THAT all required CPC approvals shall be obtained prior to the issuance of the DOB permit(s);

THAT the applicant shall forward a copy of the CPC-approved plans to BSA prior to applying for the DOB permit(s);

THAT the occupancy of the building is limited to persons 55 years of age or older;

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 March 3, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be recorded on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 118-14-BZ”) shall be obtained, by March 3, 2023;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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, May 7, 2019.

316-73-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application November 27, 2018 – Extension of Term of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which is set to expire on January 8, 2019. R4 zoning district.

PREMISES AFFECTED – 31-02 68th Street, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

126-93-BZ

APPLICANT – Sohail Humayun, for Majid Eljamal, owner.

SUBJECT – Application February 2, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on January 18, 2015; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 1225 East 233rd Street, Block 4955, Lot 1, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for adjourned hearing.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application March 6, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a three-story community facility building occupied as a house of worship (UG 4) which expired on May 6, 2018; Waiver of the Board’s Rules. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 2703 East Tremont LLC, owner; BXC Gates, LLC, lessee.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the legalization of an eating and drinking establishment (Wendy’s) with an accessory drive-through

MINUTES

facility which expires on July 9, 2018. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, Blok 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

163-14-A thru 165-14-A

APPLICANT – Ponte Equities Inc.

SUBJECT – Application July 13, 2018 – Compliance Hearing.

PREMISES AFFECTED – 502, 504 and 506 Canal Street, Block 595, Lot(s) 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

162-15-A thru 164-15-A

APPLICANT – Akerman LLP, for 144 Jamaica Inc., owner.

SUBJECT – Application July 19, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved common law vested rights application which permitted the development of the proposed residential building at the premises which expired on May 17, 2018. R5 zoning district

PREMISES AFFECTED – 139-48 88th Road, 88-30/34 144th Street, Block 9683, Lot(s) 13, (Tent. 14, 114), Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain certificates of occupancy pursuant to previously granted common law vested rights applications, which reinstated Department of Buildings (“DOB”) Permit Nos. 402531042-01-NB, 402531051-01-NB, and 402531033-01-NB and all related permits necessary to complete construction for a period that expired on May 17, 2018; and

WHEREAS, a public hearing was held on these applications on May 7, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is located on the southeast corner of 88th Road and 144th Street, within an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 42 feet of frontage along 88th Road, 87 feet of frontage along 144th Street, and 3,612 square feet of lot area; and

WHEREAS, the applicant proposes to develop the site with two (2) three- (3) family residential buildings and one (1) two- (2) family residential building (collectively, the “Buildings”), each three (3) stories high, with 5,652.75 square feet of combined floor area and providing a total of eight (8) residential units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that Permit Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB, the new building permits authorizing construction of the Buildings in accordance with R6 zoning district regulations (collectively, the “Permits”), were issued by the Department of Buildings (“DOB”) on May 11, 2007, May 14, 2007 and May 15, 2007, respectively, and all excavation and foundation construction was completed prior to July 28, 2007; and

WHEREAS, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica Plan zoning map amendment, which changed the zoning for the subject premises from an R6 zoning district to an R5 zoning district; and

WHEREAS, while the completion of 100 percent of the Buildings’ foundations vested the project as-of-right under ZR § 11-331, due to financial hardship, the applicant did not complete construction within two (2) years and obtain certificates of occupancy for the Buildings, as required by ZR § 11-332, and the Permits lapsed by operation of law; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 2010, when, under BSA Cal. Nos. 259-09-BZY, 260-09-BZY and 261-09-BZY, the Board granted extensions of time to complete construction and obtain certificates of occupancy, pursuant to ZR § 11-332, and renewed the Permits for a term of two (2) years, to expire on February 9, 2012; and

WHEREAS, on May 17, 2016, under the subject calendar numbers, the Board granted applications recognizing a common law vested right to continue construction of the Buildings, reinstated all of the permits necessary to complete construction of the Buildings and granted an extension of time to complete construction and obtain certificates of occupancy for a term of two (2) years, which expired May 17, 2018; and

WHEREAS, however, as of May 17, 2018, construction was completed but certificates of occupancy had not been issued; therefore, on that date, the previously reinstated Permits lapsed again by operation of law; and

WHEREAS, accordingly, the applicant seeks extensions of time to obtain certificates of occupancy; and

WHEREAS, the applicant states that since the Board’s 2009 approval, substantial expenditures and progress have been made to complete the Buildings and that 85 percent of the development of the subject site was completed by 2013; and

WHEREAS, the applicant represents, however, that

MINUTES

further development of the Buildings has since been delayed by issues related to obtaining the requisite approvals from the New York City Department of Environmental Protection (“DEP”) for sewer conditions on the premises and subsequent builders pavement plan (“BPP”) approvals; and

WHEREAS, the applicant additionally represents that the sewer connection and BPP approvals are the only work outstanding and certificates of occupancy will be obtained shortly after the Board’s grant of the subject extension of term; and

WHEREAS, based upon its review of the record, the Board finds that the requested two- (2) year extensions of time to complete construction and obtain certificates of occupancy are appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated May 17, 2016, so that as amended this portion of the resolution reads: “to grant extensions of time to complete construction and obtain certificates of occupancy to May 7, 2021; *on condition*:

THAT construction shall be completed by May 7, 2021;

THAT certificates of occupancy for the Buildings, also indicating this approval and calendar numbers (“BSA Cal. Nos. 162-15-A thru 164-15-A”) shall be obtained by May 7, 2021;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB)

Adopted by the Board of Standards and Appeals, May 7, 2019.

165-15-A & 166-15-A

APPLICANT – Akerman LLP, for 144 Jamaica Inc., owner.
SUBJECT – Application July 19, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved common law vested rights application which permitted the development of the proposed residential building at the premises which expired on May 17, 2018. R5 zoning district.

PREMISES AFFECTED – 88-36/38 144th Street, Block 9683, Lot(s) 15 (Tent. 15 and 16), Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for extensions of time

to obtain certificates of occupancy pursuant to previously granted common law vested rights applications, which reinstated Department of Buildings (“DOB”) Permit Nos. 402531079-01-NB and 402351060-01-NB and all related permits necessary to complete construction for a period that expired on May 17, 2018; and

WHEREAS, a public hearing was held on these applications on May 7, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is located on the west side of 144th Street, between 88th Road and 89th Avenue, within an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 40 feet of frontage along 144th Street, between 100 and 103 feet of depth, and 3,978 square feet of lot area; and

WHEREAS, the applicant proposes to develop the site with two (2) three- (3) family three- (3) story residential buildings (collectively, the “Buildings”) with 4,657.68 square feet of total floor area and a total of six (6) residential units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that Permit Nos. 402531079-01-NB and 402351060-01-NB, the new building permits authorizing construction of the Buildings in accordance with R6 zoning district regulations (collectively, the “Permits”), were issued by the Department of Buildings (“DOB”) on May 15, 2007, and all excavation and foundation construction was completed prior to July 28, 2007; and

WHEREAS, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica Plan zoning map amendment, which changed the zoning for the subject premises from an R6 zoning district to an R5 zoning district; and

WHEREAS, while the completion of 100 percent of the Buildings’ foundations vested the project as-of-right under ZR §11-331, due to financial hardship, the applicant did not complete construction within two (2) years and obtain certificates of occupancy for the Buildings, as required by ZR § 11-332, and the Permits lapsed by operation of law; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 2010, when, under BSA Cal. Nos. 257-09-BZY and 258-09-BZY, the Board granted extensions of time to complete construction and obtain certificates of occupancy, pursuant to ZR § 11-332, and renewed the Permits for a term of two (2) years, to expire on February 9, 2012; and

WHEREAS, on May 17, 2016, under the subject calendar numbers, the Board granted applications recognizing a common law vested right to continue construction of the Buildings, reinstated all of the permits necessary to complete construction of the Buildings, and granted extensions of time to complete construction and obtain certificates of occupancy for a term of two (2) years, which expired May 17, 2018; and

WHEREAS, however, as of May 17, 2018, construction

MINUTES

was completed but certificates of occupancy had not been issued; therefore, on that date, the previously reinstated Permits lapsed again by operation of law; and

WHEREAS, accordingly, the applicant seeks an extension of time to obtain certificates of occupancy; and

WHEREAS, the applicant states that since the Board's 2009 approval, substantial expenditures and progress have been made to complete the Buildings and that 86 percent of the development of the subject site was completed by 2013; and

WHEREAS, the applicant represents, however, that further development of the Buildings has since been delayed by issues related to obtaining the requisite approvals from the New York City Department of Environmental Protection ("DEP") for sewer conditions on the premises and subsequent builders pavement plan ("BPP") approvals; and

WHEREAS, the applicant additionally represents that the sewer connection and BPP approvals are the only work outstanding and certificates of occupancy will be obtained shortly after the Board's grant of the subject extension of term; and

WHEREAS, based upon its review of the record, the Board finds that the requested two- (2) year extensions of time to complete construction and obtain certificates of occupancy are appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated May 17, 2016, so that as amended this portion of the resolution reads: "to grant extensions of time to complete construction and obtain certificates of occupancy to May 7, 2021; *on condition*:

THAT construction shall be completed by May 7, 2021;

THAT certificates of occupancy for the Buildings, also indicating this approval and calendar numbers ("BSA Cal. Nos. 165-15-A & 166-15-A") shall be obtained by May 7, 2021;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application Nos. 402531079-01-NB and 402351060-01-NB)

Adopted by the Board of Standards and Appeals, May 7, 2019.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.

SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building's Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to May 21, 2018, at 10 A.M., for decision, hearing closed.

2018-125-A

APPLICANT – Cesare Giaquinto, for 495 Wild Ave, LLC, owner.

SUBJECT – Application July 30, 2018 – Proposed construction of a two-story commercial building for vehicle storage on the ground floor and accessory offices on the second floor not fronting a legally mapped street contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 495 Wild Avenue, Block 2705, Lot(s) 49, 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for postponed hearing.

MINUTES

ZONING CALENDAR

2016-4240-BZ

CEQR #17-BSA-011M

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 20, 2016, acting on Department of Buildings (“DOB”) Application No. 122813223, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per Section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C1-9 zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing four-(4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, and May 7, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Third Avenue and East 71st Street, within a C1-9 zoning district, in Manhattan; and

WHEREAS, the site has approximately 102 feet of frontage along Third Avenue, 91 of frontage along East 71st Street, 9,254 square feet of lot area and is occupied by an existing four- (4) story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 1,668 square feet of floor area on the first floor with the PCE entrance and lobby, fitness area and office; and 7,775 square feet of floor space in the cellar with a fitness studio, cycling studio, lounge and reception area, a changing area with showers, men's and women's restrooms, and areas for staff, storage and mechanical equipment; and

WHEREAS, the PCE began operation in January 2017, as "New York Sports Club," with the following hours of operation: Monday through Friday, 6:30 a.m. to 9:00 p.m., and, Saturday and Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant states that, while the majority of the PCE is located in the cellar and separated from residential uses within the subject building, sound and vibration attenuation measures have been installed in the PCE space to prevent potential noise or vibration issues to residential and commercial tenants; these measures include a multiple-layer acoustical wall assembly with batt insulation and acoustically treated columns in areas of the cellar, and acoustically treated hung ceilings with batt insulation in portions of the first floor; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing mixed-use building, mostly within the cellar; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be

satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is consistent with surrounding uses and is located in an existing building; and

WHEREAS, the applicant states that an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a connection of the interior fire alarm to an FDNY-approved central station—is installed and maintained within the PCE space; and

WHEREAS, by letter dated December 8, 2018, the Fire Department submitted a conditional letter of no objection to the application and states that on December 1, 2018, an inspection was performed by the Bureau's Licensed Public Place of Assembly ("LPPA") unit and a violation order (E562227) was issued for failure to obtain an operating permit from the DOB; to date, no place of assembly ("PA") application has been filed with DOB for the cellar and first floors; the Bureau's LPPA unit has been informed and will enforce the violation order; the premises are protected by a sprinkler system, which was inspected and found to be operational; a hydrostatic pressure test of the system is scheduled for June 2019; the premises and the PCE space currently has a fire alarm system that was inspected by the Bureau's Fire Alarm Inspection Unit and tested satisfactory; and that the Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the adequacy of notice of this application to tenants of the subject building and whether the PCE was acoustically treated to sufficiently protect the adjacent residential and commercial building tenants from noise and/or vibration associated with its occupancy; and

WHEREAS, the applicant provided photographic evidence of a notice of hearing for the March 26, 2019, continued hearing in the residential portion of the building; a report from an acoustical consultant, dated March 7, 2017, including architectural details and recommendations for sound attenuation measures; and a letter from the same acoustical consultant, dated April 4, 2019, confirming that the measures identified in the March 2017 report were "addressed"; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist

MINUTES

No. 17BSA011M, dated August 11, 2016; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C1-9 zoning district, the operation of a physical culture establishment on a portion of the cellar level and first floor of an existing four- (4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “April 6, 2018”-Ten (10) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 1, 2027;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT a place of assembly permit shall be obtained for the PCE space;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a connection of the interior fire alarm to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3-foot-wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2016-4240-BZ”), shall be obtained within one (1) year, by May 7, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 7, 2019.

2017-301-BZ

CEQR #18-BSA-061K

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Jeffrey Rosenblum, owner; Trapeze School New York LLC, lessee.

SUBJECT – Application November 16, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Trapeze School*) contrary to ZR §32-10. M1-3 zoning district.

PREMISES AFFECTED – 467 Marcy Avenue, Block 1720, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 18, 2017, acting on Department of Buildings (“DOB”) Application No. 321645957, reads in pertinent part:

Proposed physical culture establishment in M1-3 zoning district is not permitted pursuant to ZR 73-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-3 zoning district, a physical culture establishment (“PCE”) in an existing one- (1) story tent structure, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, with a continued hearing on May 7, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site bound by Marcy Avenue to the west, Flushing Avenue to the north, and Tompkins Avenue to the east, in an M1-3 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along each Marcy Avenue and Tompkins Avenue, 725 feet of frontage along Flushing Avenue, 145,000 square feet of lot area and is occupied by several existing buildings, including a one- (1) story structure in which the subject PCE is located; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such

MINUTES

special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 4,021 square feet of floor area within the tent structure with a trapeze, trapeze warm-up and staging areas, and gym areas; and

WHEREAS, the PCE began operation in May 2017, as “Trapeze School New York (“TSNY”),” operating daily from 8:00 a.m. to 10:30 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing structure in an area characterized predominantly by commercial and mixed-use buildings and properly fits within the use and character of the district; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for trapeze, aerial arts, and trampoline classes and instruction; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is consistent with mixed-use character of the neighborhood and has operated in this location for over one (1) year without any complaints; and

WHEREAS, by letter dated February 15, 2019, the Fire Department states that the structure is constructed of rigid frame with an interior and exterior membrane covering with fiberglass batt insulation; the Fire Department requests the applicant clarify if the structure is permanent as stated in the statement of facts submitted to the Board on this application or as described in the Alteration Type I (Alt. I 321645957) application, as the structure is listed as temporary; the Fire Department objects to the application and respectfully requests that the Board deny the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

application, based on the fact that the structure is constructed of combustible material, no fire suppression systems are installed and the use would be in conjunction with a trade school at these premises; and

WHEREAS, by letter dated May 6, 2019, the Fire Department states that a site inspection was performed by the Fire Department's Bureaus of Operations and Fire Prevention and has no objection to the application; the site inspection revealed that the tanks that formerly held acetone had been discontinued and decommissioned and the same was verified by the Fire Department's Hazardous Control Unit; based on the field observation and inspection of the interior and exterior membrane covering, such membrane has been treated with flame-resistant treatment as described in Section 2402.2 of the Fire Code; in addition, certification and labeling will be provided to the Fire Department as noted in Sections 2402.1 (certification) and 2402.2.2 (label), as required; the Fire Department's Licensed Public Place of Assembly ("LPPA") unit will be conducting annual inspections of these premises for compliance with Sections 2402.3 (Location and Access), 2404.4 (means of egress), 2406 (smoking) and 2404.7 (open or exposed flame) and all pertinent NYC construction codes; and that based on the information above, the Fire Department has no objection to the continued use as a permanent structure; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-061K, dated November 16, 2017; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-3 zoning district, the operation of a physical culture establishment on the first floor of an existing one- (1) story tent structure, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "April 17, 2019:-Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 1, 2027;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2017-301-BZ"), shall be obtained within one (1) year, by May 7, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 7, 2019.

2017-313-BZ

CEQR #18-BSA-071K

APPLICANT – Moshe M. Friedman, P.E., for 853 Kent Avenue LLC, owner.

SUBJECT – Application December 11, 2017 – Variance (§72-21) to permit the development of a 2-family dwelling contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 853 Kent Avenue, Block 1898, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 20, 2017, acting on DOB Application No. 321659282, reads in pertinent part:

ZR 42-00 - Proposed residential use in M1-1 district is not permitted; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a four- (4) story plus cellar two- (2) family attached residence is not permitted as-of-right in the subject zoning district,

MINUTES

contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, and May 7, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of two (2) form letters in opposition to this application citing concerns over potential construction noise and debris; and

WHEREAS, the subject site on the east side of Kent Avenue, between Park Avenue and Myrtle Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Kent Avenue, 120 feet of depth, 3,000 square feet of lot area and is currently vacant; and

WHEREAS, at the subject site, a residential dwelling is not permitted as-of-right pursuant to ZR § 42-10; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), the subject site's narrow lot width, small lot area, vacancy and history of residential use are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study demonstrating that, of the 530 other lots located within 1,000 feet of the subject site, the subject site is one (1) of only six (6) sites that has a narrow lot width of 25 feet or less, is vacant and is not owned or used in conjunction with an adjoining property; and

WHEREAS, accordingly, the applicant states that, due to the small lot area, the subject site is not well-suited for modern commercial and manufacturing operations; in support of this, the applicant demonstrated that, within the study area, nearly all conforming manufacturing uses are on properties that have lot areas many times greater than that of the subject site; and

WHEREAS, the applicant submits that a vacant, 25-foot wide zoning lot cannot accommodate a modern manufacturing or commercial building and that a 60-foot wide street—with permitted parking and 15-foot wide sidewalks on both sides—precludes sufficient access to a loading dock for a manufacturing or commercial building; and

WHEREAS, the applicant further demonstrates that, using Sanborn maps dated 1887 to 2007 and Department of Housing Preservation and Development Inspection-Cards from 1902, the subject site was developed with a residential building as early as 1887, subsequently transferred by deed to the Department of Housing and Urban Development and demolished in 1986; and

WHEREAS, in light of the foregoing, the Board finds that the status of the subject site's narrow lot width, small lot

size, vacancy and history of residential use create unnecessary hardship and practical difficulty in developing the site in strict compliance with the current underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable two- (2) family dwelling, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood and submits that, of the 37 lots that front on Kent Avenue between Park Avenue and Myrtle Avenue, 22 other lots (60 percent) contain residential use, a much larger building would be permitted as-of-right 125 feet south of the subject site in an R7A (C2-4) zoning district, and the proposed building, containing a floor area ratio of 2.0, reduced from the applicant's original proposal for a floor area ratio of 2.4, four (4) stories in height, a rear yard with over 30 feet of depth, and 60 percent lot coverage, is generally consistent with the bulk regulations of the closest residential zoning district, an R6B zoning district; and

WHEREAS, over the course of hearings, the Board raised concern regarding the height of the proposed building and requested it be reduced to more appropriately reflect the 40-foot maximum perimeter wall height allowed in a nearby R6B zoning district; and

WHEREAS, in response, the applicant reduced the height of the building from 44 feet to 41'-6"; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, based on the materials submitted into the record confirming that the site has had the same narrow width complained of since prior to the enactment of the Zoning Resolution in 1961, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the subject proposal, which requests only a waiver of the uses permitted as-of-right in a manufacturing district, is the minimum relief required in satisfaction of ZR § 72-21(e); and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") Short Form CEQR No. 18BSA071K, received May 7, 2019; and

WHEREAS, the EAS documents that the project, as

MINUTES

proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Activities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by letter dated December 14, 2018, the New York City Department of Environmental Protection (“DEP”) states that it has reviewed the November 2018 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted by the applicant’s consultant and finds the RAP and CHASP acceptable on condition that if dewatering into the City’s storm/sewer drains occurs during the proposed construction, a DEP Sewer Discharge Permit must be obtained prior to the start of any de-watering activities; so long as the applicant submits, upon completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation (“NYSDEC”) regulations, and two (2) feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—is submitted to DEP for review and approval; and

WHEREAS, the applicant subsequently provided a revised RAP to include requirements referenced in the December 2018 DEP letter; and

WHEREAS, DEP additionally reviewed the subject proposal with regards to air quality and noise and, by letter dated February 21, 2019, concluded that the proposed project would not result in any significant adverse impacts with regards to air quality or noise, subject to the following commitments from the proposed project: a composite window/wall noise attenuation of 28 dBa be required for all proposed building facades, and an alternate means of ventilation be required and be incorporated into the building design and construction; and

WHEREAS, by correspondence dated July 27, 2017 the New York City Landmarks Preservation Commissioner (“LPC”) reviewed the proposal and indicated that the subject site is of neither architectural nor archaeological significance; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of

the New York State Environmental Conservation Law and 6 NYCRR Part 617, § 6-07(b) Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a four- (4) story plus cellar two- (2) family attached residence that is not permitted as-of-right, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 7, 2019”—Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: a maximum floor area ratio of 2.0 (5999 square feet of floor area), a minimum of 40 percent open space (1,200 square feet), a maximum of 60 percent lot coverage (1,800 square feet), a maximum of two (2) dwelling units, a maximum of four (4) stories, a maximum perimeter wall height of 41’-6” and a total building height of 44 feet, and a rear yard with a depth of 47.58’, as illustrated on BSA-approved plans;

THAT upon completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation (“NYSDEC”) regulations, and two (2) feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—is submitted to DEP for review and approval;

THAT a composite window/wall noise attenuation of 28 dBa shall be required for all proposed building facades;

THAT an alternate means of ventilation shall be required and shall be incorporated into the building design and construction;

THAT the front balcony shall not extend more than 12 inches from the façade of the building, as illustrated on BSA-approved plans;

THAT no use of exterior insulation and finish system (“EIFS”) is permitted;

THAT substantial construction shall be completed pursuant to ZR § 72-23, by May 7, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-313-BZ”) shall be obtained within four (4) years, by May 7, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

MINUTES

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 7, 2019.

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – Special Permit (§73-49) to permit roof top parking on a new four-story accessory parking garage serving a four-story office building contrary to ZR §44-11. M1-1 College Point Special District.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Laid over to August 13, 2018, at 10 A.M., for continued hearing.

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING TUESDAY AFTERNOON, MAY 7, 2019 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-261-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11(Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for postponed hearing.

2018-136-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.

SUBJECT – Application August 17, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. C8-1/R2A zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108, 80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2018-137-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.

SUBJECT – Application August 17, 2018 – Special Permit (§73-19) to permit the operation of a daycare (*Children of America*) contrary to ZR §32-10. C8-1 zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108,80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-145-BZ

APPLICANT – Akerman, LLP, for Jericho Holdings LLC, owner; 251 Jericho Turnpike Fitness Group, LLC, lessee.

SUBJECT – Application September 7, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) to be located on portions of the first and second floors of a new building contrary to ZR §32-10. C8-1 Zoning District.

PREMISES AFFECTED – 251-73 Jericho Turnpike, Block 8668, Lot 108, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.

SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.

PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 21, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on December 5, 2017, under Calendar No. 2017-302-BZ and printed in Volume 102, Bulletin Nos. 49-50, is hereby corrected to read as follows:

2017-302-BZ

CEQR #18-BSA-062Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Kenneth Rudden, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 174A & 176A Beach 111th Street, Rockaway Park, westerly of intersection of Beach 111th Street and Ocean Promenade, Block 16183, Lot 62, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; and

WHEREAS, a public hearing was held on this application on December 5, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject

application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Beach 111 Street, between Rockaway Beach Boulevard and Ocean Promenade, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 60 feet of frontage along Beach 111th Street, 100 feet of depth, 6,000 square feet of lot area and was formerly occupied by six single-family detached residences prior to Superstorm Sandy; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of two two-family detached residences with a distance of 11’-10” between the buildings, contrary to minimum required distance between buildings; and

WHEREAS, at the subject site, the requirement for minimum distance between buildings is set forth in ZR § 23-711; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the

MINUTES

character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to develop the two-family residences creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirement for minimum distance between buildings and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA062Q, dated November 20, 2017.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure *and* issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 *to permit*, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received November 20, 2017"-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the subject buildings shall be as follows: a minimum distance of 11'-10" shall be provided between the subject buildings, as illustrated on the Board-approved plans;

THAT each building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT each building shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of each building where the foundation is not closed shall have a floor assembly that provides a two-hour fire resistance rating;

THAT the height from grade plane to the highest

windowsill leading to a habitable space may not exceed 32 feet;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 5, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

***The resolution has been amended to correct part of the 7th WHEREAS which read located on the east side of Stanton Road, ... Now reads: located on the east side of Beach 111 Street, ... Corrected in Bulletin No. 20, Vol. 104, dated May 17, 2019.**

BULLETIN

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May 31, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|---------------------------|-----|
| DOCKET | 402 |
| CALENDAR of June 11, 2019 | |
| Morning | 403 |
| Afternoon | 403 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, May 21, 2019**

Morning Calendar404

Affecting Calendar Numbers:

| | |
|--------------|--|
| 115-53-BZ | 252-02 Union Turnpike, Queens |
| 149-97-BZ | 150-19 11 th Avenue, Queens |
| 18-09-BZ | 250 West 54 th Street, Manhattan |
| 2017-48-A | 36 Hardy Street, Staten Island |
| 429-29-BZ | 4801 Kings Highway, Brooklyn |
| 751-60-BZ | 105 New Dorp Lane aka 1395 New Dorp Plaza, Staten Island |
| 81-74-BZ | 97-27 57 th Avenue, Queens |
| 138-87-BZ | 218-36 Hillside Avenue, Queens |
| 130-88-BZ | 3602 Snyder Avenue, Brooklyn |
| 322-05-BZ | 69-69 Main Street, Queens |
| 2018-22-A | 255 18 th Street, Brooklyn |
| 2017-147-A | 71-12 Main Street, Queens |
| 2018-166-A | 40-31 82 nd Street aka 40-19 82 nd Street, Queens |
| 2018-183-A | 71-12 Main Street, Queens |
| 111-15-BZ | 98 Third Avenue, Brooklyn |
| 2016-1208-BZ | 300 East 64 th Street, Manhattan |
| 2018-98-BZ | 160-10 Cross Bay Boulevard, Queens |
| 2016-4239-BZ | 180 Mansion Avenue, Staten Island |
| 2016-4469-BZ | 49-23 Astoria Boulevard, Queens |
| 2017-231-BZ | 765 Pennsylvania Avenue, Brooklyn |
| 2017-243-BZ | 29-16 Francis Lewis Boulevard aka 29-29 172 nd Street, Queens |
| 2017-298-BZ | 14 White Street, Manhattan |
| 2018-96-BZ | 145 Ludlow Street, Manhattan |
| 2018-116-BZ | 1982 Utica Avenue, Brooklyn |
| 2018-143-BZ | 20 West 14 th Street, Manhattan |
| 2018-180-BZ | 1441G South Avenue, Staten Island |

Afternoon Calendar425

Affecting Calendar Numbers:

| | |
|--------------|---|
| 2016-1215-BZ | 142 West 29 th Street, Manhattan |
|--------------|---|

Corrected Calendar426

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-155-BZ | 1123 East 27 th Street, Brooklyn |
|-------------|---|

DOCKETS

New Case Filed Up to May 21, 2019

2019-90-A

24, 32 Joralemon Street, Block 00258, Lot(s) 0017, Borough of **Brooklyn, Community Board: 2**. Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District R6 district.

2019-91-BZ

97-09 24th Avenue, Block 1091, Lot(s) 0041, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-45 (front yard); ZR §23-461 (side yard); and ZR §25-22 (parking). R3X zoning district. R3X district.

2019-92-BZ

23-39 98th Street, Block 1092, Lot(s) 0062, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the development of a two-family residence contrary to ZR 22-12 (Use); ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-461 (side yard); ZR 23-47 (rear yard); and ZR §§25-22 & 25-621 (parking). R3X zoning district. R3X district.

2019-93-BZ

3203 Bedford Avenue, Block 7607, Lot(s) 0013, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the development of a two-story plus cellar house of worship (UG 4) (Khal Zichron Avrohom Yaakov) contrary to ZR §24-11 (floor area/FAR), ZR §24-34 (front yard), ZR §24-35 (side yards), ZR §24-36 (rear yard) and ZR §25-31 (Parking). R2 zoning district. R2 district.

2019-94-A

36 West 66th Street, Block 1118, Lot(s) 0045, Borough of **Manhattan, Community Board: 7**. Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7 and R8 Special Lincoln Square District. C4-7, R8 district.

2019-95-BZ

19 Maspeth Avenue, Block 2893, Lot(s) 1, 59, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit the construction of a six-story mixed-use building with conforming commercial use on the ground floor and residential uses on the upper floors contrary to ZR §32-10. C8-2 zoning district. C8-2 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JUNE 11, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 11, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

222-90-BZ

APPLICANT – Kennedys CMK LLP by David M. Kupfer, for 80-02 Fee Owner LLC, owner; 24 Hour Fitness Holdings LLC, lessee.

SUBJECT – Application July 5, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on August 13, 2016: Amendment to permit reflect a new operator, changes in hours of operation and minor alteration to the layout; Extension of Time to Obtain a Certificate of Occupancy which expired on March 7, 2009; Waiver of the Board’s Rules. C4-4 zoning district.

PREMISES AFFECTED – 80-02 Kew Gardens Road, Block 3348, Lot 37, Borough of Queens.

COMMUNITY BOARD #9Q

157-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 2856 Astoria LLC, owner; TSI Astoria LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) on the first and second floor of a three-story commercial building which expired on February 27, 2017; Waiver of the Rules. C4-2A and C2-2/R6 zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, Block 662, Block 41, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.
SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING JUNE 11, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 11, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 750 Grand Associates, L.P., owner; for Absolute Power Corp., lessee.

SUBJECT – Application January 13, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Absolute Power*) within the cellar of an existing building. C4-4A zoning district.

PREMISES AFFECTED – 750 Grand Street, Block 2789, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2017-51-BZ

APPLICANT – Jay Goldstein, Esq., for 51 Warren Retail LLC, owner; Dancebody, lessee.

SUBJECT – Application February 21, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Dancebody*) located in the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A/C6-3A (Tribeca South Historic District Extension)

PREMISES AFFECTED – 51 Warren Street aka 49 Warren Street, Block 133, Lot 7506, Borough of Manhattan.

COMMUNITY BOARD #1M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 21, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application May 11, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on July 11, 2018. C2-2R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a previously granted variance that permitted the operation of an automotive service station, which expired on July 11, 2018; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Katz also recommends approval of this application; and

WHEREAS, the subject site is bound by Union Turnpike to the north, Little Neck Parkway to the east, 80th Avenue to the south and 252nd Street to the west, in an R3-2 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 208 feet of frontage along Union Turnpike, 88 feet of frontage along Little Neck Parkway, 200 feet of frontage along 80th Avenue, 20 feet of frontage along 252nd Street, 10,800 square feet of lot area, and is occupied by a one- (1) story automotive service station (1,930 square feet of floor area), four (4) multiple product dispensers (“MPD”) and seven (7) off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 7, 1953, when, under the subject calendar number, the Board granted a variance, for a term of 15 years, to permit the premises to be occupied as a gasoline service station, substantially as proposed and as indicated on plans filed with the application, on condition that the premises be leveled substantially to the grade of the surrounding streets and be arranged and designed as indicated on plans filed with the application; the accessory building be face brick on all sides and the roof be surfaced with imitation slate asphalt shingles; such building be of the design and arrangement as indicated on plans filed with the application and in all other respects comply with all laws, rules and regulations applicable thereto; there be no cellar under the accessory building; pumps be of a low approved type and erected not nearer than 15 feet to the street building line; the sidewalks around the premises be constructed to the satisfaction of the Borough President; along 80th Avenue, where the wall of the accessory building does not occur, there be erected a masonry fence not less than two (2) feet in height with a steel picket fence erected thereon to a total height of not less than 5’-6”;

such fence continue to the street building line of Union Turnpike to the west and for a distance of approximately 35 feet along Little Neck Parkway, as shown; the curb cuts be restricted to three (3) curb cuts to Union Turnpike, each not over 30 feet in width, located substantially where shown, and one (1) to Little Neck Parkway of similar width; no portion of any curb cut be nearer than five (5) feet to any building line as prolonged; the number of gasoline storage tanks be limited to ten (10) 500-gallon tanks; under Section 7, Subdivision i, there may be minor repairing with hand tools only for adjustments, maintained solely within the accessory building; under Section 7, Subdivision e, there may be parking of cars awaiting service; planting be maintained with suitable plant material in the spaces indicated and be properly protected with concrete curbing not less than six (6) inches in height and six (6) inches in width above grade; the balance of the premises where not occupied by accessory building, pumps and planting be paved with concrete or asphaltic pavement; such portable firefighting appliances be maintained within the accessory building as the Fire Commissioner requires; all equipment for greasing be of the hydraulic lift type; windows in the accessory building facing on 80th Avenue be fireproof self-closing and arranged so as not to extend when open beyond the building line; all permits be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution; and

WHEREAS, on November 24, 1953, under the subject calendar number, the Board amended the resolution, adopted on July 7, 1953, as to the location of the pumps by adding that the westerly island of pumps may be 14 feet from the building line in place of 15 feet as required, and the pumps facing Union Turnpike may be as shown on plans referred to in the resolution, on condition that in all other respects the resolution as adopted by the Board on July 7, 1953, be complied with; and

MINUTES

WHEREAS, on November 9, 1954, under the subject calendar number, the Board further amended the resolution to permit the installation of 16 550-gallon tanks, on condition that in all other respects the resolution adopted on July 7, 1953, be complied with and such tanks be installed as indicated on plans filed with the application; and

WHEREAS, on October 1, 1968, under the subject calendar number, the Board granted a ten (10) year extension of the term of the variance, to expire on July 7, 1978, on condition that, other than as amended, the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on September 15, 1970, under the subject calendar number, the Board further amended the resolution to permit the installation of a 4,000-gallon approved type gasoline tank and one (1) new pump to existing island, to conform to plans filed with the application, on condition that in all other respects the resolution previously adopted be maintained and all laws, rules and regulations be complied with; and

WHEREAS, on June 15, 1971, under the subject calendar number, the Board further amended the resolution to permit the rearrangement of the pump islands, substantially as shown on plans filed with the application, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on July 11, 1978, under the subject calendar number, the Board granted a ten (10) year extension to the term of the variance, to expire on July 11, 1988, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year, by July 11, 1979; and

WHEREAS, on February 7, 1989, under the subject calendar number, the Board granted a ten (10) year extension to the term of the variance, to expire on July 11, 1998, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year, by February 7, 1990; and

WHEREAS, on April 20, 1999, under the subject calendar number, the Board further amended the resolution to grant an extension to the term of the variance and to permit the replacement of two (2) existing pump islands and dispensers with four (4) new pump islands and the installation of two (2) new canopies over the dispensers; the addition of a 30-foot curb cut on Union Turnpike, a 30-foot curb cut on 80th Avenue and two (2) 30-foot curb cuts on Little Neck Parkway; the removal of two (2) existing curb cuts, one (1) located on Union Turnpike and the other on Little Neck Parkway, on condition that the term of the variance be limited to ten (10) years from July 11, 1998, to expire on July 11, 2008; the premises remain graffiti free at all times; no vehicles be parked on sidewalks; all signs be maintained in accordance with BSA-approved plans and the

premises be maintained in substantial compliance with the drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 20, 2000; and

WHEREAS, on December 8, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to grant an extension to the term of the variance for ten (10) years from July 11, 2008, to expire on July 11, 2018, on condition that all use and operations substantially conform to plans filed with the application; the conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained by June 8, 2010; signage comply with C2-2 zoning district regulations; all conditions from the prior resolution not specifically waived by the Board remain in effect; the Department of Buildings (“DOB”) ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding compliance with the conditions requiring the landscaping and also requested evidence of the installation of a trash enclosure on the site; and

WHEREAS, in response, the applicant submitted photographs of the site demonstrating site improvements in satisfaction of the Board including compliant landscaping at the site as well as an installed trash enclosure; and

WHEREAS, by letter dated January 31, 2019, the Fire Department states that a review of Fire Department records indicates that the subject automotive service station is current with its Fire Department permits for storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system, and that the Fire Department has no objection to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated July 7, 1953, as amended through December 8, 2009, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “May 2, 2019”- Eight (8) sheets; and *on further condition*:

MINUTES

THAT the term of this grant shall expire on July 11, 2028;

THAT landscaping, fencing and the trash enclosure shall be maintained, as shown on the BSA-approved plans and repaired or replaced as necessary to remain in a first-class condition;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with C2-2 zoning district regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 115-53-BZ”) shall be obtained within one (1) year, by May 21, 2020; 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, May 21, 2019.

149-97-BZ

APPLICANT – Francis R. Angelino, Esq., for Martin A. Gleason Funeral Home, LLC, owner.

SUBJECT – Application August 2, 2018 – Amendment of a previously approved Variance (§72-21) which permitted an accessory open parking lot (UG 7E) for use with a funeral establishment (UG 7B). The amendment seeks to reflect a reduction in the size of the zoning lot and number of parking spaces from 34 spaces to 29; Extension of Term which expired on August 11, 2018. R2A zoning district.

PREMISES AFFECTED – 150-19 11th Avenue, Block 4515, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board, and an amendment to permit the subdivision of the subject zoning lot and a reduction in parking spaces; and

WHEREAS, a public hearing was held on this application on March 5, 2019, after due notice by

publication in *The City Record*, with a continued hearing on April 30, 2019, and then to decision on May 21, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda R. Katz recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 11th Avenue, between 150th Street and Clintonville Street, in an R2A zoning district, in Queens; and

WHEREAS, the site has approximately 60 feet of frontage along 11th Avenue, 170 feet of depth, 10,300 square feet of lot area and is occupied by an accessory open parking lot; and

WHEREAS, the site is adjacent to a non-conforming funeral establishment (Lot 1) that has been subject to the Board’s jurisdiction since June 11, 1968, when, under BSA Calendar Number 138-68-BZ, the Board granted a variance to permit, in an existing two-story building, the construction of a one-story enlargement to the first-floor funeral establishment with accessory parking in the open area on condition that the two then existing at the subject site be installed; and

WHEREAS, the Board has exercised jurisdiction over the subject site (Lot 52) since August 11, 1998, when, under the subject calendar number, the Board granted a variance to permit an accessory open parking lot for an existing funeral establishment for a term of twenty (20) years, expiring August 11, 2018, on condition that access to the parking lot be limited to customers of the funeral establishment and be limited to no later than 9:30 p.m., that the parking lot be locked and secured after hours, that fencing and screening be maintained in accordance with the Board-approved drawings, that lighting be positioned down and away from the adjacent residential uses and be limited in accordance with the Board-approved drawings and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension and an amendment to permit the subdivision of the subject zoning lot and a reduction in parking spaces; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of term of a variance; and

WHEREAS, the applicant proposes to subdivide the subject zoning lot to reflect that the eastern portion of the subject site is no longer under the control of the property owner; and

WHEREAS, the applicant proposes to reduce the number of parking spaces from 34 spaces to 29 spaces and submitted evidence that the provided parking far exceeds that required based on zoning requirements and parking demand generated by the funeral establishment; and

WHEREAS, at hearing, the applicant clarified that the second floor continues to be used as a residence; and

MINUTES

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated August 11, 1998, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of twenty (20) years, expiring August 11, 2038, and subdivision of the subject zoning lot with a reduction of parking spaces from 34 spaces to 29 spaces; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 8, 2019”- One (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to twenty (20) years, expiring August 11, 2038;

THAT access to the parking lot shall be limited to customers of the funeral establishment and be limited to no later than 9:30 p.m.;

THAT the parking lot shall be locked and secured after hours;

THAT fencing and screening shall be maintained in accordance with the Board-approved drawings;

THAT lighting shall be positioned down and away from the adjacent residential uses and be limited in accordance with the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 149-97-BZ”), shall be obtained within four (4) years, by May 21, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, May 21, 2019.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Deputy Borough Commissioner, dated October 25, 2017, acting on Department of Buildings (“DOB”) Application No. 122508410, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted as-of-right as per Section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expires on November 1, 2021, and an amendment to the same to permit a change in operator; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, with continued hearings on June 19, 2018, December 11, 2018, and May 21, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the subject site is located on the south side of West 54th Street, between Eighth Avenue and Broadway, in a C6-5 zoning district and in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 125 feet of frontage along West 54th Street, 101 feet of depth along the western side lot lone and 85 feet of depth along the eastern side lot line, 11,690 square feet of lot area, and is occupied by an existing 12-story plus cellar commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the first floor (4,048 square feet of floor area), second floor (7,921 square feet of floor area) and third floor (5,389 square feet of floor area) of the existing building; and

MINUTES

WHEREAS, the Board has exercised jurisdiction over the subject site July 28, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, operated as “Gold’s Gym,” on the first, second and third floors of the existing 12-story building on condition that all work substantially conform to approved drawings filed with the application; the term of the grant expire on November 1, 2011; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on January 24, 2012, under the subject calendar number, the Board reopened and amended the resolution adopted on July 28, 2009, to extend the term for a period of ten (10) years, to expire on November 1, 2021, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on November 1, 2021; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit to expire in 2021, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application more than one (1) year before the expiration of the term of the special permit; and

WHEREAS, the applicant also seeks an amendment to reflect a change to the owner and operator of the PCE, to “Crunch”; and

WHEREAS, the Department of Investigation has performed a background check on the new corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed satisfactory; and

WHEREAS, the applicant represents that the current

operator of the PCE, Crunch, has operated at the subject site since their acquisition of the premises in June 2012 with the following hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m.; Saturday, 7:00 a.m. to 9:00 p.m.; and Sunday, 7:00 a.m. to 8:00 p.m.; and

WHEREAS, by letter dated June 27, 2018, the Fire Department states that applications have been filed with the DOB and the status of the applications is as follows: 1) Fire alarm system (Alt. II 122677148): plans disapproved 03/12/2018; 2) Alteration Type I (Alt. I 122508410): plans disapproved 10/10/2017, please note the modification to the sprinkler system is filed under this application and, according to DOB Building Information System (“BIS”), the document is listed as “application processed;” 3) Place of Assembly: no application has been filed to obtain approval and an operating permit for the PCE space – the Fire Department requests that the Board direct the applicant to file a place of assembly application prior to granting an extension of the term; the building is currently protected with a Modified Class-E fire alarm system, which was inspected and approved on September 1, 2010; Fire Department records indicate that the system has no outstanding violations and is operable; a test was conducted and witnessed by the Bureau of Fire Prevention for the standpipe system and the permit expires on May 16, 2023; the testing of the building sprinkler system is overdue and a test date has been scheduled for March 16, 2019; the testing of the building sprinkler system does not affect the applicant for the PCE space; as mentioned, no place of assembly application has been filed for the PCE; the Bureau’s Licensed Public Place of Assembly (“LPPA”) unit has issued a violation order and enforced the order by issuing a criminal summons; the Fire Department respectfully requests that the Board direct the applicant to file such application with the DOB prior to granting any extension of the term; once the application has been filed, LPPA can track the approval process and issue any orders if the application is not reviewed and approved in a timely manner; Fire Prevention will assist the applicant of record for the fire alarm application for review and approval; once the plans have been approved, the fire alarm installer will be responsible for scheduling a test date with the Fire Alarm Inspection Unit (“FAIU”) in the Bureau of Fire Prevention; both LPPA and High-Rise Unit (“HRU”) have been informed of the fire alarm application for the PCE and will issue any violation orders if testing is not performed on the fire alarm system covering the PCE; and

WHEREAS, over the course of hearings, the Board expressed concerns regarding the filing and approval status of the place of assembly permit for the PCE space; and

WHEREAS, in response, the applicant represented that the place of assembly permit was filed at DOB and the applicant has been working to resolve all of the objections related to said filing; and

WHEREAS, by letter dated May 18, 2019, the Fire Department states that, as per the Fire Department’s July 27, 2018, letter, the applicant filed a place of assembly

MINUTES

application (PA# M00150864) which has been reviewed and disapproved by the DOB; the Bureau's LPPA unit will be notified of the application and monitor the site for compliance with the previously issued violation order; and, that the Fire Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, the applicant specifically requests a five (5) year extension of term to coincide with the term of the PCE operator's lease at the subject site; and

WHEREAS, accordingly, the Board finds that a five (5) year extension of term, and the subject amendment to permit a change in owner and operator, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated July 28, 2009, as amended through January 24, 2012, so that, as amended, this portion of the resolution reads: "to permit an extension of term for five (5) years, to expire on November 1, 2026, and permit a change in operator of the PCE, to "Crunch," *on condition* that the use and operation of the site shall conform to drawings filed with this application marked 'December 11, 2018-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT all massages shall be provided by New York State licensed massage therapists;

THAT an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT a place of assembly permit shall be obtained for the PCE space and the operator shall resolve all outstanding objections;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 18-09-

BZ") shall be obtained within one (1) year, by May 21, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, May 21, 2019.

2017-48-A

APPLICANT – Akeeb Shekoni, for Nigerian Muslim Community of Staten Island, owner; Hamzat Kabiawu, lessee.

SUBJECT – Reopen – to modifies the decision of the Staten Island Deputy Borough Commissioner, dated May 23, 2017, acting on Department of Buildings Application No. 520256767, and permit the enlargement and conversion of existing buildings into a Use Group 4 house of worship within the bed of a mapped street, contrary to General City Law ("GCL") § 35. R3A Zoning District.

PREMISES AFFECTED – 36 Hardy Street, Block 638, Lot(s) 44, 46, 47, 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this application to modifies the decision of the Staten Island Deputy Borough Commissioner, dated May 23, 2017, acting on Department of Buildings Application No. 520256767, and permit the enlargement and conversion of existing buildings into a Use Group 4 house of worship within the bed of a mapped street, contrary to General City Law ("GCL") § 35 was granted on June 19, 2018 on condition; and

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated March 13, 2019, acting on the same application number and with regards to current tax lot 49, reads in pertinent part:

[...]

2. ZR 24-34, ZR 72-01g: Proposed enlargement in the required front yard is contrary to required minimum front yard; and

WHEREAS, this is an application to amend the Board's prior grant of a waiver of GCL § 35 to include a waiver, pursuant to ZR § 72-01(g), of the minimum front yard requirements set forth in ZR § 24-34; and

WHEREAS, the hearing was reopened on May 21,

MINUTES

2019, after due notice to the applicant, and then decided on the same date; and

WHEREAS, the subject site is comprised of four contiguous tax lots located at the southwest corner of Hardy Street and Waverly Place, in an R3A zoning district, on Staten Island; and

WHEREAS, an Application for Mergers or Apportionments for the merger of Tax Lots 44, 46, 47 and 49 on Block 638 on Staten Island into Tentative Tax Lot 44 was approved by the New York City Department of Finance on January 25, 2016, though the New York City Tax Map has not yet been updated to reflect this merger; and

WHEREAS, the site has approximately 100 feet of frontage along Hardy Street, 100 feet of frontage along Waverly Place and 10,000 square feet of lot area; and

WHEREAS, current tax lots 44 and 46 are occupied by a two-story one-family residence partially located within a mapped but unbuilt portion of Waverly Place and tax lots 47 and 49 are occupied by a two-story Use Group 4 house of worship; and

WHEREAS, the Board last exercised jurisdiction over the subject lots on September 28, 1971, when, under BSA Cal. Nos. 441-71-A (current tax lot 49), 438-71-A (current tax lot 47), 439-71-A (current tax lot 46) and 436-71-A (current lot 44), the Board granted waivers of GCL § 36 to permit the issuance of certificates of occupancy for buildings not fronting legal mapped streets (Hardy Street); and

WHEREAS, the portion of Hardy Street fronting the subject site obtained a Corporation Counsel Opinion, dated January 8, 1982, indicating the street as in use to a width of 50 feet; and

WHEREAS, the applicant proposes to connect the two existing buildings and convert the resulting enlargement into a Use Group 4 house of worship; and

WHEREAS, at the subject site, a front yard with a minimum depth of 15 feet is required pursuant to ZR § 24-34 on the portion of the site fronting Hardy Street as well as Waverly Place, a mapped but unimproved street that traverses the northeastern corner of the site (current tax lot 44); and

WHEREAS, pursuant to DOB Buildings Bulletin 2014-001, issued January 9, 2014, with the purpose “To clarify when privately owned mapped streets can be used for zoning purposes,” the required front yard must be measured from the street widening line that separates a mapped street from other land and not include the mapped street; and

WHEREAS, the applicant proposes a 15-foot front yard fronting Hardy Street and a front yard fronting Waverly Place with a width of 5 feet, as measured to the northern side lot line of the subject site, not including the unmapped street, and a width of 15 feet including the width of Waverly Place that, at the subject location, is mapped, but unimproved; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, pursuant to ZR § 72-01(g), the Board has the power, after public notice and hearing:

to waive *bulk1* regulations affected by unimproved *streets* where a *development, enlargement* or alteration consists in part of construction within such *streets* and where such *development, enlargement* or alteration would be *non-complying* absent such waiver, provided the Board has granted a permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the *development* or *enlargement* to be located within the unimproved *streets* to be compliant and conforming to the provision of this Resolution. Such bulk waivers shall only be as necessary to address *non-compliance* resulting from the location of the *development* or *enlargement* within and outside the unimproved *streets*, and the *zoning lot* shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved *streets* were not mapped . . .; and

WHEREAS, the Board notes that the subject application seeks to enlarge an existing two-story one-family residential building, wholly located on existing tax lot 44 and partially located within the mapped, but unimproved, portion of Waverly Place, which was issued Certificate of Occupancy No. 47920, dated October 23, 1974; and

WHEREAS, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore, it is Resolved, that the Board modifies the decision of the Staten Island Deputy Borough Commissioner, dated March 13, 2019, acting on Department of Buildings Application No. 520256767, and amends the resolution, dated June 19, 2018, so that, as amended, this portion of the resolution reads: “to waive a bulk regulation associated with the presence of the mapped but unbuilt street, ZR § 24-34 (Minimum Required Front Yard), pursuant to ZR § 72-01(g) *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received March 29, 2019”-One (1) sheet; and *on further condition*:

THAT a front yard with a minimum depth of 5 feet fronting Waverly Place shall be provided, as indicated on the Board-approved plans;

THAT a 35-foot DEP utility easement with the minimum available width of 27 feet at the narrowest point shall be provided inside of Tentative Tax Lot 44 for the installation, maintenance and/or reconstruction of the future and existing sewers and water main, as indicated on the BSA-approved plans;

THAT the subject development shall be fully sprinklered;

THAT the new curb cut proposed on Waverly Place shall be as approve by DOT and/or DOB;

THAT a fire hydrant shall located within 200 feet of the Siamese connection and 250 feet of the main entrance;

1 Words in italics are as defined in section 12-10 of the Zoning Resolution.

MINUTES

THAT all roadways shall be paved to the requirements of DOT;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by May 21, 2023;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution;

THAT to the extent required by DOB and/or DOT, a Builder's Pavement Plan shall be filed and approved prior to the issuance of the Certificate of Occupancy;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2017-48-A") shall be obtained within four (4) years, by May 21, 2023;

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, May 21, 2019.

429-29-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubricatorium to an accessory convenience store with a drive-thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of

Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board's Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application December 30, 2016 – Extension of Term /amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for adjourned hearing.

130-88-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) which expires on January 29, 2019. C2-2/R4 zoning district.

PREMISES AFFECTED – 3602 Snyder Avenue, Block 4907, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M. for continued hearing.

MINUTES

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired on March 7, 2017. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building’s Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Request for re-argument denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, this is an application to reargue an application previously heard and approved by the Board on November 20, 2018; and

WHEREAS, by submission dated February 19, 2019, a representative of the owner of the premises (“Appellant”) filed an application, pursuant to § 1-12.4 of the Board’s Rules of Practice and Procedure, to reargue this application, filed by the New York City Department of Buildings (“DOB”), to revoke Certificate of Occupancy No. 301016898F issued to the subject premises on September 18, 2013 (the “CO”); and

WHEREAS, Appellant argues that the Board’s determination was not supported by precedent, relevant facts, the New York State Multiple Dwelling Law (the “MDL”), the Zoning Resolution (the “ZR”) or the New York Supreme Court, Appellate Division’s decision in Byrne v. Board of Standards & Appeals, 774 N.Y.S.2d 493 (1st Dept. 2004) (“Byrne”); and

WHEREAS, specifically, Appellant states that, consistent with the Board’s determination in BSA Cal. No.

166-12-A (638 East 11 Street, Manhattan) (July 17, 2018) (the “East 11th Street Appeal”), the Board should only have revoked the CO with regards to the portions of the building that the Board found to be non-complying and upheld issuance of the CO for the cellar, first floor and dwelling units located at the front of the subject building on the second through fourth floors; the Board erred in concluding that the plans submitted with Document 2 of the Alteration Type 1 Application/Job No. 3010168698—the DOB application upon which the CO’s issuance was based—rather than plans submitted with Documents 3 or 4 filed under the same application, were the plans upon which the building’s compliance with the CO should have been based; the Board erroneously applied MDL § 277 to the subject building; the Board irrationally concluded that “significant construction” would be required to bring the building into compliance with the legal light and air requirements set forth in MDL § 277; and the Board erred in its interpretation and application of the “substantial completion” standard justifying the issuance of a certificate of occupancy, as explained by the First Department in Byrne; and

WHEREAS, a public hearing was held on this application on May 7, 2019, after due notice by publication in *The City Record*, and then to decision on May 21, 2019; and

WHEREAS, the subject site is located on the north side of 18th Street, between 5th Avenue and 6th Avenue, in an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along 18th Street, a depth of 100 feet, 10,017 square feet of lot area and is occupied by a four-story plus cellar building; and

WHEREAS, § 1-12.4 of the Board’s Rules of Practice and Procedure states, in relevant part:

The Board will not grant a request to reargue a case which was denied, dismissed, or approved unless the applicant shows that the Board misapprehended the relevant facts or misapplied any controlling principals of law, including the Zoning Resolution; and

WHEREAS, the Board disagrees with Appellant that it misapprehended the relevant facts, specifically that it erred in concluding that the plans submitted with Document 2—a Post Approval Amendment (“PAA”) filed on October 5, 2000, “to rem[ove] portion of rear wall, then construct new exterior walls as per plans”—were the plans upon which

1 The original decision for BSA Cal. No. 166-12-A (which was heard and decided with BSA Cal. No. 107-13-A, an application for common law vested rights at the same premises) was rendered on October 17, 2017. Both DOB and appellant in that case filed motions to reargue the application, which the Board denied by resolution dated June 19, 2018. The Board made its own motion, however, to review the October 17, 2017, decision and rendered such reviewed and revised decision on July 17, 2018.

MINUTES

compliance of the building with the CO should have been adjudged; and

WHEREAS, in its submission in opposition to this application, dated April 26, 2019, DOB states that Appellant's assertion that plans were submitted in association with Documents 3 or 4 filed under Job No. 301016898 is "pure conjecture" and contrary to the evidence in the record, which suggests that neither Documents 3 nor 4 were accompanied by plan sheets; and

WHEREAS, DOB states that Section 7 of the Department's Plan / Work Application (PW1) form, titled "Plans/Construction Documents Submitted," contains the question, "Are plans being submitted with this PW1?" and provides checkboxes for a "Yes" or "No" response; and

WHEREAS, DOB explains that the "Yes" checkbox was selected in answer to this question on the PW1 applications for both Documents 1 and 2 and those applications further indicated that the submitted plans were "AR- Architectural," but no checkbox was selected on the PW1 applications for either Document 3 or 4 in response to this question; further, under the subheading "Plan Page Count," also contained in Section 7 of the PW1 form, both Documents 3 and 4 state "0," indicating that zero plan sheets were filed in association with these documents; and

WHEREAS, DOB also states that the description of Documents 3 and 4 contained in Section 24 of their respective PW1 applications state, "PAA FILED TO ADD CONTROLLED INSPECTIONS AND ANSWER AUDIT OBJECTIONS" and "PAA FILED TO AMEND PW1 SCHEDULE A," and that neither job, as described, requires the submission of new plans; and

WHEREAS, DOB contrasts these descriptions with the job description of Document 2, which states, "REMOVE PORTION OF REAR WALL, THEN CONSTRUCT NEW EXTERIOR WALLS AS PER PLANS," and explicitly references associated plans; and

WHEREAS, Appellant asserts that Document 3 was filed on March 12, 2013, in response to a DOB Notice of Objections, dated October 16, 2012, which, among other objections, stated "No Plans found for Audit"; thus, the reference to "ANSWER[ING] AUDIT OBJECTIONS" in the description on the Document 3 PW1 application was to the applicant's submission of the missing plan set; and

WHEREAS, Appellant also points to DOB records of plan examinations of Job No. 301016898, accessible online through DOB's Building Information Search ("BIS"), which indicate DOB plan examination approval related to Document 3 on April 5, 2013; and

WHEREAS, DOB states that the Document 3 PW1 application directly undermines Appellant's argument in its failure to check the "Yes" box in answer to the query in Section 7 regarding the submission of plans and, further, that Appellant's argument ignores the possibility that the plans submitted in response to the Notice of Objections and approved by DOB on April 5, 2013, were the same plans filed with Document 2 on October 5, 2000, indicating setbacks at the rear wall of the building; and

WHEREAS, Appellant states that DOB is obligated, by uncited provisions of the New York City Administrative Code and City Charter, to maintain filed plans and that DOB erred in failing to maintain and submit into the Board's record the plans allegedly filed in association with Documents 3 and/or 4; and

WHEREAS, the Board notes that Appellant, as a representative of the owner of the subject premises, alleges the existence of plans that they have also failed to submit into the Board's record on this appeal and that it would not be unreasonable for the owner of the premises to possess copies of the architectural drawings upon which the CO was based or to have sought such copies from the files of its consultants, such as an architect who is professionally advised to maintain drawings for several years; and

WHEREAS, therefore, in the absence of a set of plans in the Board's record alternative to those filed with Document 2 on October 5, 2000, under Job No. 301016898 and indicating Use Group 2 dwelling units at the subject premises, the Board did not misapprehend the facts in making the determination that the plans filed with Document 2, which also indicate setbacks in the rear wall of the building in compliance with MDL § 277, were the plans upon which the CO's issuance was premised; and

WHEREAS, the Board also disagrees with Appellant that its previous determination on this application was affected by "misapplication" of the East 11th Street Appeal: the facts of the subject case are wholly distinguishable from those in the East 11th Street Appeal and the Board did not "apply" any aspects of that case in its evaluation of the subject application to revoke; and

WHEREAS, the East 11th Street Appeal involved a certificate of occupancy for two structures on a single zoning lot (a mixed-use building containing occupied dwelling units (the "Front Building") and a structure located in the Front Building's rear yard (the "Rear Structure")), the revocation of which would have rendered occupancy in both structures unlawful; the Board ultimately determined that the Rear Structure neither complied with nor conformed to applicable zoning regulations and that the failure of the certificate of occupancy to even reference the presence of the Rear Structure on the zoning lot necessitated its modification; hence, in that case, the Board denied DOB's application to revoke the certificate of occupancy with regards to the Front Building, granted the application with regards to the Rear Structure and directed DOB to issue a new or modified certificate of occupancy reflecting the presence of both the Front Building and the Rear Structure on the zoning lot upon the satisfactory completion of all work necessary to bring the site into full compliance with all applicable law; and

WHEREAS, in contrast, the subject CO is for one building on a zoning lot and the Board determined that the CO was unlawfully issued with regards to the dwelling units on the second through fourth floors located at the rear of the building because those units do not, and did not at the time of CO issuance, comply with the legal light and air

MINUTES

requirements of MDL § 277; that the CO was unlawfully issued with regards to the portion of the first floor indicated on the CO as containing two dwelling units because inspection of the premises failed to evidence that any portion of this floor was ever converted to residential occupancy (or converted to residential occupancy at the time the CO was issued and subsequently converted back); that the CO was unlawfully issued insofar as the entire building was outfitted with a sprinkler system that failed to comply with both the 1968 Building Code and the MDL; and that the CO was unlawfully issued as to dwelling units located throughout the building containing interior work, including the construction of mezzanines, that do not conform to the plans filed with Document 2, unlawfully increase the building's floor area and may have been present at the time of the CO issuance; and

WHEREAS, because conditions that render the CO unlawfully issued are located throughout the sole building that the CO is intended to reflect and include a non-compliant fire protection system that is located throughout the building, a partial revocation of the CO, as in the East 11th Street Appeal, would have been impracticable; and

WHEREAS, Appellant argued during the initial hearings on this application, and argues again in the subject request for reargument, that the Board misapplied MDL § 277 to the subject building pursuant to ZR § 15-112(b) because the building was converted to residential use pursuant to ZR § 52-31, not ZR § 15-01, et seq.; and

WHEREAS, ZR § 52-31 reads, in pertinent part: Except as provided in this Section, a *non-conforming use*² may be changed to any conforming use, and the applicable district *bulk* regulations and *accessory* off-street parking requirements shall not apply to such change of use or to alterations made in order to accommodate such conforming use, but shall apply to any enlargement;

WHEREAS, ZR § 15-01, located in Chapter 5 of Article 1, titled "Residential Conversion within Existing Buildings," reads, in relevant part:

In Manhattan Community Districts 1, 2, 3, 4, 5 and 6, Brooklyn Community Districts 1, 2, 6 and 8, and Queens Community Districts 1 and 2, *conversions* in *buildings* or portions thereof, erected prior to December 15, 1961, shall be subject to the provisions of this Chapter.

In addition, in Manhattan Community District 1, in the area south of Murray Street and its easterly prolongation and the Brooklyn Bridge, *conversions* in *buildings* or portions thereof, erected prior to January 1, 1977, shall be subject to the provisions of this Chapter.

For purposes of this Chapter, *conversion* shall mean the change of non-residential floor area to

residences or *joint living-work quarters for artists*. *Conversions* shall also include the *conversion* of existing floor space used for mechanical equipment and not counted as *floor area* to *residences* or *joint living-work quarters for artists*.

[...]; and

WHEREAS, Appellant asserts that ZR § 15-01, et seq., and therefore, ZR § 15-112(b), is not applicable at the subject site because the premises are in Brooklyn Community District 7, which is not one of the named districts in which that Chapter of the Zoning Resolution is applicable; and

WHEREAS, Appellant mischaracterizes the Board's determination that MDL § 277 applies at the subject property as being pursuant to ZR § 15-112(b), which requires every dwelling unit converted pursuant to ZR § 15-01, et seq. to meet the light and air requirements of MDL § 277; and

WHEREAS, MDL § 277 begins as follows:

277. Occupancy permitted. Any building in any city of more than one million persons which at any time prior to January first, nineteen hundred seventy-seven was occupied for loft, commercial, institutional, public, community facility or manufacturing purposes, may, notwithstanding any other article of this chapter [Chapter 61-a of the Consolidated Laws of New York, the Multiple Dwelling Law], or any provision of law covering the same subject matter (except as otherwise required by the local zoning law or resolution), be occupied in whole or in part for joint living-work quarters for artists or general residential purposes if such occupancy is in compliance with this article. Such occupancy shall be permitted only if the following conditions are met and complied with; and

WHEREAS, the subject building is in New York City, a city of more than one million persons, was constructed in or around 1905, as indicated on the building façade, and was occupied, prior to January 1, 1977, as a manufacturing building pursuant to Certificate of Occupancy No. 120146 of 1948; and

WHEREAS, accordingly, MDL § 277 applies at the subject site, "notwithstanding any other article of this chapter, or any provision of law covering the same subject matter (except as otherwise required by the local zoning law or resolution)"; and

WHEREAS, MDL § 277(7)(b)(i)(E) reads as follows:

7. Minimum light and air standards for joint living-work quarters for artists or general residential portions of lofts or manufacturing and commercial buildings altered to residential use shall comply with the following:

[...]

(b) Portions of such building which are occupied exclusively as residential units as permitted

² Words in italics in the Zoning Resolution are interpreted in accordance with the definitions set forth in ZR § 12-10.

MINUTES

- by local law shall comply with the following:
- (i) Every dwelling unit shall have one or more windows:
[...]
 - (E) in no event shall the distance between such windows and the rear lot line be less than five feet; and

WHEREAS, Appellant has not identified any requirement of the “local zoning law or resolution,” that is, the Zoning Resolution, that would supplant the requirements of MDL § 277(7)(b)(i)(E), which must be complied with notwithstanding any other MDL provision covering the same subject matter; and

WHEREAS, instead, Appellant states, in support of this application, that as a fireproof building, the subject building may be converted to residential occupancy pursuant to Article 4 of the MDL, entitled “Fireproof Multiple Dwellings,” and must comply with light and air provisions of Article 3 (“Multiple Dwellings—General Provisions”), which include, in MDL § 26(5) and (7), respectively, requirements for rear yards and courts, “[e]xcept as otherwise provided in the zoning resolution of the city of New York”; and

WHEREAS, in summary, Appellant suggests that the only bulk regulations with which the subject building must comply are, pursuant to Article 3 of the MDL, the bulk regulations applicable at the subject site through the Zoning Resolution and those bulk regulations are rendered inapplicable pursuant to ZR § 52-31; and

WHEREAS, Appellant’s argument ignores the plain language of MDL § 277, which states that it is the operative provision of the MDL regarding the residential occupancy of certain former manufacturing buildings in New York City “notwithstanding any other articles of this chapter, or any provision of law covering the same subject matter,” meaning that in cases of conflict with the provisions of Articles 3 and/or 4—which, Appellant argues, direct the building to only comply with the Zoning Resolution—MDL § 277 controls; and

WHEREAS, this argument also ignores the plain language of MDL § 278, titled “Application of other provisions,” which enumerates other articles and sections of the MDL that, like MDL § 277, apply to certain former manufacturing buildings in New York City and does not include Article 3, Article 4 or MDL § 26 on that list, indicating that those articles and section do not apply to the subject building as Appellant suggests; and

WHEREAS, while ZR § 52-31 excuses a building being converted from a non-conforming use to a conforming use from having to comply with the bulk requirements of the underlying zoning district as set forth in the Zoning Resolution, ZR § 52-31 does not excuse such building from having to complying with any other applicable laws, such as MDL § 277, which may separately impact the building’s bulk; accordingly, such a building may both be converted pursuant to ZR § 52-31 and required to comply with MDL § 277(7)(b)(i)(E); and

WHEREAS, in fact, Drawing No. 1 of the plans filed with Document 2 under Job No. 301016898 includes, under the heading “Zoning Analysis” and above the handwritten notes regarding MDL § 277 compliance, a note that reads, “Proposed Conversion to Residential Use (Art. 7B of MDL & ZR 52-31)...Bulk Regulations, Accessory Off-Street Parking Not Applicable To This Conversion As Per ZR 52-31,” indicating that the building is subject to both provisions; and

WHEREAS, Appellant suggests that the Board also misapprehended the facts with regards to its Board’s observation that “significant construction” would be required for the building to comply with MDL § 277(7)(b)(i)(E) and the plans submitted with Document 2 of Job No. 301016898, upon which the CO was premised; and

WHEREAS, this finding was based on the Board Commissioners’ professional expertise with regards to building construction as well as materials in the record, including Drawing Nos. 3 and 4 of the plans submitted with Document 2 of Job No. 301016898, approved by DOB on October 6, 2000, which show, in both plan and section, 5’-6” recesses in the rear wall of the subject building and indicate the demolition of portions of the 100 foot-long rear masonry wall and portions of existing flooring and construction of a continuous two-hour fire rated exterior frame wall with firestopping on both sides at the second, third and fourth floors; and

WHEREAS, that observation notwithstanding, the Board’s determination that the CO was unlawful at the time of issuance was premised, not by the “significance” of any work to make the building compliant with all applicable law, but by the failure to provide legal light and air to the dwelling units located at the rear of the subject building in accordance with MDL § 277, the lack of any evidence that the first floor was ever occupied with two dwelling units as stated on the CO and the presence of mezzanines and other construction in dwelling units located throughout the building not reflected in the plans filed with Document 2 under Job No. 301016898; and

WHEREAS, finally, Appellant argues that in erroneously relying on the plans filed with Document 2, rather than alternative plans absent from the record but alleged by Appellant to exist, the Board misapplied the “substantial completion” standard explained by the First Department in Byrne; that because there is no evidence, as there was in Byrne, that the owner of the subject building is not willing to complete required work or falsely certified to DOB that the building was compliant with all applicable law, the Board erred in revoking the CO instead of allowing the owner to correct existing non-compliances; that compliance with MDL § 277 was not a basis of DOB’s request to revoke the CO; and that Appellant was never afforded a fair opportunity to argue the applicability of that section to the premises; and

WHEREAS, the Board disagrees that its determination to revoke the CO in this case was inconsistent with the First Department’s decision in Byrne or otherwise an abuse of

MINUTES

discretion; and

WHEREAS, as stated, *supra*, the Board disagrees that it erred in its determination that the CO issuance was based on plans filed with Document 2 under Job No. 301016898; and

WHEREAS, the prior resolution having neither cited to *Byrne* nor utilized a “substantial completion” standard, Appellant’s arguments that the Board has “misapplied” either is illogical; and

WHEREAS, the discussion of “substantial completion” in the First Department decision in *Byrne* was with regards to the Board’s determination, under BSA Cal. No. 297-00-A (5 West 21st Street, Manhattan) (July 17, 2001), that a certificate of occupancy was lawfully issued because the owner had “substantially completed” work that had been identified by DOB as required to render the building compliant with its residential certificate of occupancy and that “substantial completion” could be adjudged as of sometime later than the date of the issuance of the certificate of occupancy, such as during the pendency of an application filed at the Board to revoke; and

WHEREAS, the Board justified its determination with Section 27-215 of the New York City Administrative Code (the 1968 Building Code), which applies to certificates of occupancy issued to buildings altered pursuant to the 1968 code and states, in relevant part, that certificates of occupancy “certify[] that the alteration work for which the permit was issued *has been completed substantially* in accordance with the approved plans” (emphasis added), and imposes a less stringent standard than New York City Charter § 645(b)(3)(d), which requires that certificates of occupancy issued by DOB “certify that such building or structure *conforms* to the requirements of all laws, rules, regulations and orders applicable to it” (emphasis added); and

WHEREAS, the First Department rebuffed the Board’s argument that its interpretation of Section 27-215 be afforded great weight and judicial deference, disagreed that the language of Section 27-215 indicated that “substantial completion” could be adjudged as of any date later than the date of the certificate of occupancy’s issuance and concluded that even under a deferential standard, the Board’s finding of “substantial completion” was an “erroneous factual conclusion” unsupported by the record, which demonstrated that none of the construction in a fifth-floor dwelling unit required to render the building compliant with its residential certificate of occupancy was completed prior to the issuance of the certificate of occupancy in March 2000 or even by the time the Board rendered its decision on the revocation application in 2001; and

WHEREAS, the Board’s record in that case also included findings by an administrative law judge in proceedings before the New York City Loft Board relating to the same building that the owner refused to do any of the work required for compliance; and

WHEREAS, contrary to Appellant’s assertions, the Board’s determination to revoke the CO in this case is, in

fact, consistent with the First Department’s decision in *Byrne* in that the determination is supported by the Board’s factual record and was properly considered as of September 13, 2013, the date of the CO’s issuance, not the time of the Board’s review of the application to revoke; and

WHEREAS, regarding Appellant’s assertion that non-compliance with MDL § 277 was not a basis for revocation of the CO provided by DOB, the Board notes that its review of appeals applications is *de novo* pursuant to New York City Charter § 666(6) and the agency’s review is not limited to arguments advanced by the applicant; and

WHEREAS, finally, Appellant’s assertion that they were not afforded an opportunity to discuss MDL § 277 as it applies to the subject premises is factually inaccurate, to wit, by submission dated November 9, 2018, under the heading, “New Issues Raised at the [October 11, 2018] Hearing,” Appellant argued, as Appellant argues again now, that MDL § 277 does not apply at the subject premises because the building was converted to residential use pursuant to ZR § 52-31, not ZR § 15-01, et seq., an argument that, as explained in greater detail, *supra*, the Board finds unavailing; and

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* the application to reargue BSA Cal. No. 2018-22-A.

Adopted by the Board of Standards and Appeals, May 21, 2019.

2017-147-A

APPLICANT – Beni Rachmanov/Owners of Block 6619, for Mable Assets LLC, owner; Sholom Sholom Inc., lessee. SUBJECT – Application May 15, 2017– Appeal of a NYC Department of Buildings denial. C1-2/R4 zoning district. PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for continued hearing.

2018-166-A

APPLICANT – Queens Neighborhoods United/c/o Tania Mattos, for AA 304 GC LLC, owner. SUBJECT – Application October 18, 2018 – Interpretative Appeal challenging the Department of Buildings permit issued for the development of a mixed-use building. Appeal of DOB permit that classifies the retail space occupied by Target as a UG 6 use.

PREMISES AFFECTED – 40-31 82nd Street aka 40-19 82nd Street, Block 1493, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-183-A

APPLICANT – Beni Rachmanov/Owners of Block 6619, for Mable Assets LLC, owner; Sholom Sholom Daycare, lessee.

SUBJECT – Application November 20, 2018– Appeal of a NYC Department of Buildings denial. C1-2/R4 zoning district.

PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for continued hearing.

ZONING CALENDAR

111-15-BZ

APPLICANT – Eric Palatnik, P.C., for 98 Third Avenue Realty LLC c/o Bill Wolf Petroleum Corporation, owner.

SUBJECT – Application October 3, 2017 – Variance (§72-21) to permit a six-story mixed use building with ground floor commercial space and residential space on the upper floors a contrary to ZR section 42-00. M1-2 zoning district.

PREMISES AFFECTED – 98 Third Avenue, Block 388, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeal, May 21, 2109.

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, the decision of the Department of

Buildings (“DOB”), dated January 8, 2016, acting on DOB Application No. 122619639 reads in pertinent part:

ZR 32-31, ZR 73-36: Proposed use [*sic*] as a Physical culture establishment is not permitted and is contrary to ZR 32-31. This job must be referred to the Board of standards and appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site partially located within a C2-8 zoning district and partially located within an R8B (C2-5) zoning district, a physical culture establishment (“PCE”) on portions of the ground floor and second floor of a 27-story mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, March 26, 2019, May 7, 2019, May 21, 2019, and then to decision on May 21, 2019; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of East 64th Street and Second Avenue, partially located within a C2-8 zoning district and partially located within an R8B (C2-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 125 feet of frontage along East 64th Street, 50 feet of frontage along Second Avenue, 6,302 square feet of lot area and is occupied by a 27-story mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies approximately 333 square feet of floor area on the ground floor and 5,100 square feet of floor area on the second floor of the existing building; and

WHEREAS, the second floor consists of a lobby, fitness studios, changing rooms, bathrooms and storage; and

WHEREAS, the PCE has operated as Barry's Bootcamp since January 2016 from 5 a.m. to 11 p.m., seven days a week; and

WHEREAS, the applicant represents that the subject PCE will neither impair the essential character nor the future use or development of the surrounding areas because it is located in a commercial district and surrounded by properties that are similarly occupied by mixed-use commercial and residential buildings with commercial uses on the ground floor and/or second floor and residential uses above; the applicant further asserts that the subject PCE is compatible with surrounding uses; and

WHEREAS, the Board received letters, email and testimony at hearing from residents of the subject building complaining about loud music, the audibility of class instructors' voices and vibrations associated with the dropping of weights in the PCE space and insisted that the applicant engage an acoustical consultant to complete noise testing, incorporate measures in the PCE space that would adequately attenuate the issues identified by the residential tenants and immediately alter the PCE's operations by lowering the volume on speakers and mics and enforcing a "no dropping" policy with regards to weights; and

WHEREAS, despite adjusting sound levels in the PCE space, further isolating the speakers from the wall and installing mat tiles on the floors on the recommendation of an acoustic consultant, residential tenants continued to complain that music from the PCE and instructors' voices continued to be audible in their dwelling units, located on the fifth floor of the subject building, most notably during classes scheduled around 5:30 a.m. and 8 or 9 pm; and

WHEREAS, the fourth continued public hearing on this application was originally scheduled for June 11, 2019, but, upon the continued receipt of emphatic complaints from residential neighbors about noise emanating from the PCE after the March 26, 2019, public hearing, including weekly noise logs in which tenants listed the date and time of disturbances, the Board notified the applicant that the hearing would be moved to the May 7, 2019, public hearing calendar; and

WHEREAS, at the May 7 hearing, the applicant's representative stated that additional noise testing would be conducted, that prior testing had not revealed audible levels in the residential units tested, that the overall audio in the PCE space had been lowered remotely by 2 decibels and that the applicant was hopeful that such change would mitigate the remaining noise complaints; and

WHEREAS, at that hearing, the Board requested that all issues regarding noise in the facility be cured by the next hearing, scheduled for May 21, specifically, the Board requested that there be no amplified sound—either music or instructors' voices—in the PCE space until that hearing and the applicant take that time to investigate the nature of the problem, which may ultimately be structural, including coordinating with residential tenants to confirm whether certain improvements remediated the source of their complaints; and

WHEREAS, the applicant nevertheless continued its operations as usual, the Board received noise logs from the two residential tenants who had previously complained about disturbances from the PCE indicating that both residents continued to hear the sound of weight drops, bass from amplified music and instructors' voices in their dwelling units after the May 7 hearing as well as testimony from a third residential tenant of the building, complaining of hearing weight drops from the PCE space in her fifth-floor dwelling unit; and

WHEREAS, pursuant to ZR § 73-03 (General Findings Required for All Special Permit Uses and

MINUTES

Modifications), to grant a special permit use, the Board must make, not only the findings required in the applicable Zoning Resolution section, but also find:

[t]hat, under the conditions and safeguard imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by appropriate conditions governing location of the site, design and method of operation; and

WHEREAS, the Board cannot determine that the adverse effects of the subject PCE use, which has operated at the subject site since January 2016 without a PCE special permit, on the privacy, quiet, light and air in the neighborhood, and more specifically, in the subject building, can be minimized by appropriate conditions as evidenced by the operator's failure to adequately address the concerns of the tenants raised in public hearing; and

Therefore, it is Resolved, decision of the Department of Buildings ("DOB"), dated January 8, 2016, acting on DOB Application No. 122619639, is sustained and this application is hereby denied.

Adopted by the Board of Standards and Appeals, May 21, 2019.

2018-98-BZ

CEQR #18-BSA-142Q

APPLICANT – Akerman LLP, for GC Cross Bay Realty LLC, owner; 140 Cross Bay Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application May 24, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Planet Fitness*) on a portion of the ground floor and the entire second floor of an existing commercial building contrary to ZR §32-10. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard, Block 14030, Lot(s) 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Queens Deputy Borough Commissioner, dated April 24, 2019, acting on Department of Buildings ("DOB") Application No.

421455749 (Doc #3), reads in pertinent part:

The proposed physical culture establishment is not permitted as of right in an R3-1/C2-2 zoning district as per ZR Section 32-10 and therefore requires a ZR Section 73-36 special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within an R3-1 (C2-2) zoning district and partially within an R2 zoning district, a physical culture establishment ("PCE") on the first and second floor of an existing two- (2) story plus basement commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on March 5, 2019, and May 21, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 10, Queens, recommends approval of this application subject to the following conditions: (1) the tenant, Planet Fitness, along with the property owner provide attendant services within the parking lot behind the building to increase the number of spaces; (2) attendant parking use be noted along with the current parking provided and that total number of spaces (148 plus additional spaces made possible by attendant parking) appear on the temporary and final certificates of occupancy; and, (3) Planet Fitness provide security in the parking lot and in the interior of their first and second floor space due to their request to operate 24 hours, 7 day a week; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application and one (1) form letter in opposition to this application raising concerns including but not limited to the adequacy of the existing parking lot to serve the PCE's patrons and a potential increase in traffic due to the presence of the PCE at the subject site; and

WHEREAS, the subject site is located on the southwest corner of Cross Bay Boulevard and 160th Avenue, partially within an R3-1 (C2-2) zoning district and partially within an R2 zoning district, in Queens; and

WHEREAS, the site has approximately 265 feet of frontage along Cross Bay Boulevard, 175 feet of frontage along 160th Avenue, 46,375 square feet of lot area and is occupied by an existing two- (2) story plus basement commercial building and off-street parking lot containing 70 parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site, then identified as tax lot 1, since May 5, 1959, when, under BSA Cal. No. 247-56-BZ, the Board granted a variance to permit the erection of a class one building to be used as bowling alleys, with less than the required setback for a G-1 area and with parking for patrons and employees, all as shown on plans filed with the application, on condition that the building be fireproof in all

MINUTES

respects and built according to such plans and with brick walls faced with an approved face brick; the parking lot be as shown on such plans, surrounded on all sides and at the building line by a 5'-6" woven wire fence and with one (1) 25-foot gate and 20-foot curb cut opening on 160th Avenue and one (1) 25-foot curb cut on Cross Bay Boulevard; there may be a 15-foot curb cut to the smaller parking lot to the south, opening on 161st Avenue, equipped with a 25-foot gate, all as shown on such plans; the vehicular entrance to Cross Bay Boulevard be controlled by chains when the building is unoccupied; the building not be increased in height or area; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; the emergency exits required by the Building Code or DOB be provided; there be no signs on the 92nd Street front of the building or along the north and south walls of the building more than 25 feet from the Cross Bay Boulevard building line; an aluminum canopy over the driving end of the parking lot at the Cross Bay Boulevard building line may be permitted with a sign on the supporting pylon not to exceed 18 feet in height, as shown on plans; and, all permits required, including a certificate of occupancy, be obtained and all work completed within one (1) year; and

WHEREAS, on March 15, 1960, under BSA Cal. No. 247-56-BZ, the Board granted a further variance to then-tax lot 1 to permit the erection of a class one building to be used for a bowling alley, restaurant, bar, kitchen, snack bar, shop, office, nursery, meeting rooms and store room, extending from the business into the residence use portion of the plot and occupying more than the permitted area coverage and with parking of patrons' cars, no fee, on the unbuilt upon portion of the plot, on condition that the work be done in accordance with drawings filed with the application; the location of the air conditioning equipment be moved into the business district portion of the plot; all laws, rules and regulations applicable be complied with; and, all permits and a certificate of occupancy be obtained and all work completed within one (1) year; and

WHEREAS, on June 12, 1973, under BSA Cal. No. 1045-67-BZ, the Board granted a variance to then-tax lot 1 to permit, in what was then an R2 zoning district, the construction and maintenance of an accessory parking lot for an adjoining commercial establishment for a term of five (5) years on condition that all work substantially conform to drawings filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by June 12, 1974; and

WHEREAS, on July 24, 1973, under BSA Cal. No. 1045-67-BZ, the Board reopened the agency record for the express purpose of accepting the petition of Community Board #10, Queens, dated July 9, 1973, as evidence supplementing and correcting objectors' position in opposition at the hearings of the Board on the above application and, upon such reconsideration, denied the application; and

WHEREAS, on June 27, 1978, under BSA Cal. No. 1045-67-BZ, the Board reopened and amended the June 1973 resolution to extend the term for ten (10) years, to expire on June 27, 1988, on condition that bumpers be installed in compliance with the rules and regulations of the DOB; the parking lot area be cleaned and maintained; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by June 27, 1979; and

WHEREAS, on May 10, 1988, under BSA Cal. No. 1045-67-BZ, the Board reopened and further amended the resolution to extend the term for ten (10) years, to expire on June 27, 1998, and to permit the closing of the alcoves with a 6'-0" high stockade fence located on 92nd Street as shown on the site plan of existing and proposed conditions filed with the application, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year, by May 10, 1989; and

WHEREAS, on January 12, 1993, under BSA Cal. No. 1045-67-BZ, the Board reopened and further amended the resolution to permit the accessory use of then-tax lot 1, recently consolidated with adjacent tax lots 6 and 20, as required parking for the proposed retail establishment and existing post office on tax lot 20, as well as accessory parking for the existing automobile showroom on new tax lot 6, on condition that the landscaping, fences and sidewalks be adequately maintained; there be no parking on the sidewalks; all lights be positioned down and away from adjacent residential property; the lots be secured after business hours; the premises be maintained in substantial compliance with proposed conditions drawings filed with the application; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year, by January 12, 1994; and

WHEREAS, on July 19, 1994, under BSA Cal. No. 1045-67-BZ, the Board reopened and further amended the resolution to permit a change in the configuration of the accessory parking layout, substantially as shown on the proposed conditions site plan filed with the application, on condition that the gates to the parking lot be closed after business hours; the premises be maintained graffiti free; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 19, 1995; and

WHEREAS, on May 18, 2010, under BSA Cal. No. 1045-67-BZ, the Board waived its Rules of Practice and Procedure, reopened and further amended the resolution to eliminate the term and to remove the specified condition related to the permitted hours of operation of the parking lot from prior approvals, on condition that all use and operations substantially conform to plans filed with the application; the site be maintained free of debris and graffiti; landscaping, fencing and sidewalks be adequately maintained in conformance with the approved plans; there be no parking on the sidewalks; all lighting be directed

MINUTES

down and away from adjacent residential uses; the conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on August 16, 2011, under BSA Cal. No. 1045-67-BZ, the Board reopened and further amended the resolution to permit an extension of time to obtain a certificate of occupancy, to expire on August 16, 2013, on condition that the use and operation of the site substantially conform to the previously approved plans; a new certificate of occupancy be obtained by August 16, 2013; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, by letter dated October 4, 2016, the Board permitted a proposed enlargement to one of the buildings located at the subject site and found that the proposed enlargement, to add a second floor to the existing one- (1) story commercial building, substantially complied with the Board's grants with respect to the capacity, number of parking spaces and layout of the existing parking lot; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 5,360 square feet of floor area on the first floor with a reception area, exercise area, a "black card spa" area with tanning rooms, automatic massage chairs, automatic hydro-massage bed, and storage space; and 13,186 square feet of floor area on the second floor with exercise areas and men's and women's locker rooms with bathrooms and showers; and

WHEREAS, the PCE began operation on January 14,

MINUTES

2019, as “Planet Fitness,” operating 24 hours per day, daily; and

WHEREAS, the applicant states that, while the PCE is located in a commercial building, attenuation measures have been installed in the PCE space to prevent potential noise or vibration issues to commercial tenants in the subject building; these measures include rubber flooring in the PCE exercise areas, batt insulation in partitions, a suspended ceiling, and the PCE maintains low music volume levels and represents that excessive noise is not allowed; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing commercial structure on Cross Bay Boulevard, a commercial corridor, and is surrounded by similar commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the benefits provided by the PCE will greatly outweigh any potential disadvantages to the community; and

WHEREAS, the applicant states that an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a connection of the interior fire alarm and sprinkler system to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated January 2, 2019, the Fire Department states that applications were filed with the DOB for the fire alarm system (Alt. II 421554927) and the change of use (Alt. I 421455749); to date, no application has been filed for the public assembly space at the second floor for 209 persons; these premises have an existing fire alarm system and the Bureau will require the PCE to install such system and be maintained as per the NYC Fire Code; and, the Bureau of Fire prevention recommends that the Board, in granting a special permit, add as a condition that the applicant obtains an approval and sign-off for the fire alarm system and an operating permit from the DOB; and

WHEREAS, over the course of hearings, the Board questioned whether the PCE is permitted to be located within the portions of the subject building located within an R2 zoning district, where a special permit pursuant to ZR §

73-36 is not available; and

WHEREAS, ZR § 77-11 reads in pertinent part: Whenever a #zoning lot# existing on December 15, 1961, or on any applicable subsequent amendment thereto, is divided by a boundary between districts in which different #uses# are permitted, the #use# regulations applicable to the district in which more than 50 percent of the #lot area# of the #zoning lot# is located may apply to the entire #zoning lot#, provided that the greatest distance from the mapped district boundary to any #lot line# of such #zoning lot# in the district in which less than 50 percent of its area is located does not exceed 25 feet. Such distance shall be measured perpendicular to the mapped district boundary; and

WHEREAS, in response, the applicant submitted materials from the record of BSA Cal. No. 1045-67-BZ indicating that all of the subject tax lots were a single zoning lot prior to December 15, 1961, the commercial building on tax lot 6 was developed pursuant to ZR § 77-11, the district boundary line was relocated to the building’s rear wall and the use regulations applicable to a C2-2 zoning district were applicable across the entire zoning lot as it existed at that time; subsequent enlargements of the zoning lot have not impacted the location of the district boundary line with regards to the building already constructed on the site; and, thus, commercial uses on the first floor of the building, including the subject PCE, are conforming; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18BSA142Q, dated June 1, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the first and second floors, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within an R3-1 (C2-2) zoning district and partially within an R2 zoning district, the operation of a physical culture

MINUTES

establishment on the first and second floors of an existing two- (2) story plus basement commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “February 14, 2019”-Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 14, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT a place of assembly permit shall be obtained for the PCE space;

THAT an approved fire alarm system—including manual pull stations at each required exit, local audible and visual alarms, area smoke detectors and a connection of the interior fire alarm and sprinkler system to an FDNY-approved central station—shall be installed and maintained within the PCE space;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-98-BZ”), shall be obtained within one (1) year, by May 21, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 21, 2019.

2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.

SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.

PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2016-4469-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Winston Network, Inc., owner.

SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2017-231-BZ

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.

SUBJECT – Application August 17, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Block 4938, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

MINUTES

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – Variance (§72-21) to permit the construction of a seven-story plus penthouse mixed commercial and residential building contrary to floor area regulations of ZR §111-20; street wall regulations of ZR §23-662; accessory parking regulations of ZR §13-11; and the curb cut location requirements of ZR §13-241. C6-2A (Special Tribeca Mixed Use District. Tribeca East Historic District.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for adjourned hearing.

2018-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for continued hearing.

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2018-143-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; Fithouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.

SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.

PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 4, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, MAY 21, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.

ZONING CALENDAR

2016-1215-BZ

APPLICANT – Eric Palatnik, P.C., for Ratna Realty Inc.,
owner.

SUBJECT – Application February 5, 2016 – Variance (§72-
21) to permit a non-conforming Use Group 2 in an M1-6
zoning district.

PREMISES AFFECTED – 142 West 29th Street, Block 804,
Lot 63, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October
22, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on April 9, 2019, under Calendar No. 2018-155-BZ and printed in Volume 104, Bulletin Nos. 15-16, is hereby corrected to read as follows:

2018-155-BZ

CEQR #19-BSA-039K

APPLICANT – Jay Goldstein, Esq., for Moishe Loketch, owner.

SUBJECT – Application October 9, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461(A) (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 1123 East 27th Street, Block 7627, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 7, 2018, acting on DOB Application No. 321383864, reads in pertinent part:

1. ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%;
2. ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed Open Space Ratio (OSR) is less than the required 150%;
3. ZR 23-461(a): Proposed plans are contrary to ZR 23-461(A) in that the proposed Side Yards are less than the required 5’-0” and 8’-0”;
4. ZR 23-47: Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards and rear yards contrary to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side

of East 27th Street, between Avenue K and Avenue L, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage on East 27th Street, 100 feet of depth, 4,000 square feet of lot area, and is occupied by a two- (2) story plus cellar single-family detached dwelling containing 2,566 square feet of floor area (0.64 FAR), an open space ratio of 1.02 (2,626 square feet of open space), a front yard with a depth of ten (10) feet, two (2) side yards with widths of 3’-4” and 10’-8”, and a rear yard with a depth of 30’-5”;

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear*

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

yard is not located within 20 feet of the *rear lot line*; and

- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the building by both vertically and horizontally extending the dwelling along the side yards and into the rear yard, resulting in a three- (3) story plus cellar dwelling with 3,810 square feet of floor area (0.95 FAR), an open space ratio of 0.62 (2,363 square feet of open space), a front yard with a depth of ten (10) feet, two (2) side yards with widths of 3'-4" and 10'-8", and a rear yard with a depth of 24 feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,374 square feet to 1,637 square feet, the second floor from 1,192 square feet to 1,430 square feet, and create a third floor with 744 square feet of floor area; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.5 is required, two (2) side yards, each five (5) feet in width and 13 feet of total side yard are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying 3'-4" side yard and the Board notes that, pursuant

to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying northern side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 112 qualifying residences, 94 residences (84 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.13, and 16 residences (14 percent) have an FAR of 0.95 or greater; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 42 other single- or two- (2) family dwellings located on interior lots, 17 lots (41 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 14 feet to 29, including the dwellings located immediately adjacent to and to the rear of the subject site, which all have a rear yards with a depth of 20 feet and two of which (the lot immediately north of the subject site and the lot to the rear of the subject site) also have detached garages located in the rear yard; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-039K, dated October 11, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one- (1) family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; *on condition* that all work shall

MINUTES

substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "April 9, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.95 (3,810 square feet of floor area), a minimum open space ratio of 0.62 (2,363 square feet of open space) two (2) side yards with minimum widths of 3'-4" and 10'-8", and a rear yard with a minimum depth of 24 feet at all stories, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-155-BZ") shall be obtained within four (4) years, by April 9, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 9, 2019.

***The resolution has been amended to change the side yard which should have been reflected as 10'-8" and not ten (10) feet. Corrected in Bulletin Nos. 21-22, Vol. 104, dated May 31, 2019.**

BULLETIN

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June 14, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|----------------------------------|---------|
| DOCKET | 431 |
| CALENDAR of June 25, 2019 | |
| Morning | 438 |
| Afternoon | 438/439 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, June 4, 2019**

Morning Calendar440

Affecting Calendar Numbers:

698-59-BZ 2773 Nostrand Avenue, Brooklyn
67-91-BZ 54-55 Little Neck Parkway, aka 260-01 Horace Harding Expressway, Queens
126-93-BZ 1225 East 233rd Street, Bronx
177-06-BZ 1840 Richmond Terrace, Staten Island
21-08-BZ 1601 Bronxdale Avenue, Bronx
303-12-BZ 1106-1108 Utica Avenue, Brooklyn
277-13-BZ 1769 Fort George Hill, Manhattan
156-73-BZ 1975 Eastchester Road, Bronx
132-92-BZ 3948 Amboy Road, Staten Island
271-13-BZ 129 Norfolk Street, Brooklyn
2018-166-A 40-31 82nd Street aka 40-19 82nd Street, Queens
2018-23-A &
 2018-24-A 29 and 31 Herbert Street, Staten Island
2016-4217-BZ 1665 Bartow Avenue, Bronx
77-15-BZ 244-36 85th Avenue, Queens
263-15-BZ 45/47 Little Clove Road, Staten Island
2016-4153-BZ 4701 19th Avenue, Brooklyn
2017-244-BZ 2208 Boller Avenue, Bronx
2018-52-BZ 159 Boerum Street, Brooklyn
2018-55-BZ 222 Johnson Avenue, Brooklyn
2018-104-BZ 1234-1238 East 22nd Street, Brooklyn
2018-109-BZ 9-03 44th Road, Queens
2018-171-BZ 1 East 70th Street, Manhattan
2018-180-BZ 1441G South Avenue, Staten Island

Afternoon Calendar471

Affecting Calendar Numbers:

2018-191-BZ 215 North 10th Street, Brooklyn

Corrected Calendar472

Affecting Calendar Numbers:

2017-302-BZ 174A & 176A Beach 111th Street, Queens

DOCKETS

New Case Filed Up to June 4, 2019

2019-96-A

50 Bluebelt Loop, Block 07562, Lot(s) 53, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-97-A

54 Bluebelt Loop, Block 07562, Lot(s) 52, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-98-A

58 Bluebelt Loop, Block 07562, Lot(s) 51, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-99-A

62 Bluebelt Loop, Block 07562, Lot(s) 50, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-100-A

66 Bluebelt Loop, Block 07562, Lot(s) 49, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-101-A

72 Bluebelt Loop, Block 07562, Lot(s) 48, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-102-A

76 Bluebelt Loop, Block 07562, Lot(s) 47, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-103-A

80 Bluebelt Loop, Block 07562, Lot(s) 46, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-104-A

84 Bluebelt Loop, Block 07562, Lot(s) 45, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-105-A

88 Bluebelt Loop, Block 07562, Lot(s) 44, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-106-A

92 Bluebelt Loop, Block 07562, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-107-A

96 Bluebelt Loop, Block 07562, Lot(s) 42, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-108-A

101 Bluebelt Loop, Block 07562, Lot(s) 111, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-109-A

105 Bluebelt Loop, Block 07562, Lot(s) 110, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-110-A

109 Bluebelt Loop, Block 07562, Lot(s) 109, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-111-A

113 Bluebelt Loop, Block 07562, Lot(s) 108, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-112-A

117 Bluebelt Loop, Block 07562, Lot(s) 107, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-113-A

125 Bluebelt Loop, Block 07562, Lot(s) 41, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-114-A

126 Bluebelt Loop, Block 07562, Lot(s) 106, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-115-A

129 Bluebelt Loop, Block 07562, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-116-A

130 Bluebelt Loop, Block 07562, Lot(s) 105, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-117-A

133 Bluebelt Loop, Block 07562, Lot(s) 39, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-118-A

134 Bluebelt Loop, Block 07562, Lot(s) 104, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-119-A

137 Bluebelt Loop, Block 07562, Lot(s) 38, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-120-A

138 Bluebelt Loop, Block 07562, Lot(s) 103, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-121-A

141 Bluebelt Loop, Block 07562, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-122-A

142 Bluebelt Loop, Block 07562, Lot(s) 102, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-123-A

145 Bluebelt Loop, Block 07562, Lot(s) 36, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-124-A

146 Bluebelt Loop, Block 07562, Lot(s) 101, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-125-A

149 Bluebelt Loop, Block 07562, Lot(s) 35, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-126-A

150 Bluebelt Loop, Block 07562, Lot(s) 100, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-127-A

158 Bluebelt Loop, Block 07562, Lot(s) 98, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-128-A

154 Bluebelt Loop, Block 07562, Lot(s) 99, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-129-A

161 Bluebelt Loop, Block 07562, Lot(s) 34, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-130-A

162 Bluebelt Loop, Block 07562, Lot(s) 97, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-131-A

165 Bluebelt Loop, Block 07562, Lot(s) 33, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-132-A

166 Bluebelt Loop, Block 07562, Lot(s) 96, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-133-A

169 Bluebelt Loop, Block 07562, Lot(s) 32, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-134-A

170 Bluebelt Loop, Block 07562, Lot(s) 95, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-135-A

173 Bluebelt Loop, Block 07562, Lot(s) 31, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-136-A

174 Bluebelt Loop, Block 07562, Lot(s) 94, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-137-A

177 Bluebelt Loop, Block 07562, Lot(s) 130, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-138-A

178 Bluebelt Loop, Block 07562, Lot(s) 193, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-139-A

182 Bluebelt Loop, Block 07562, Lot(s) 92, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-140-A

186 Bluebelt Loop, Block 07562, Lot(s) 91, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-141-A

190 Bluebelt Loop, Block 07562, Lot(s) 190, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-142-A

319 Bluebelt Loop, Block 07562, Lot(s) 25, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-143-A

323 Bluebelt Loop, Block 07562, Lot(s) 26, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-144-A

324 Bluebelt Loop, Block 07562, Lot(s) 23, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-145-A

327 Bluebelt Loop, Block 07562, Lot(s) 27, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-146-A

328 Bluebelt Loop, Block 07562, Lot(s) 22, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-147-A

331 Bluebelt Loop, Block 07562, Lot(s) 28, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-148-A

332 Bluebelt Loop, Block 07562, Lot(s) 21, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-149-A

335 Bluebelt Loop, Block 07562, Lot(s) 29, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-150-A

336 Bluebelt Loop, Block 07562, Lot(s) 20, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-151-A

338 Bluebelt Loop, Block 07562, Lot(s) 19, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-152-A

342 Bluebelt Loop, Block 07562, Lot(s) 18, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-153-A

346 Bluebelt Loop, Block 07562, Lot(s) 17, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-154-A

350 Bluebelt Loop, Block 07562, Lot(s) 16, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

2019-155-A

364 Bluebelt Loop, Block 07562, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. Application to permit the construction of fifty-nine (59) two (2) story detached homes and one (1), two (2) story pre-school not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District. R3X SRD LGMD LL district.

DOCKETS

2019-156-BZ

257-09 Union Turnpike, Block 08513, Lot(s) 2, Borough of **Queens, Community Board: 13**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Goldfish Swim School) to be located within an existing retail space located within an existing shopping center contrary to ZR §32-10. C4-1 zoning district. C4-1/R3-2 district.

2019-157-BZ

88-02 Northern Boulevard, Block 01436, Lot(s) 1, Borough of **Queens, Community Board: 3**. Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district. C1-2/R4 district.

2019-158-BZ

89-03 57th Avenue, Block 01845, Lot(s) 41, Borough of **Queens, Community Board: 4**. Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district. C1-2/R6 district.

2019-159-BZ

249 Church Street, Block 00174, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Nova Fitness) to be located on the first, cellar and sub-cellar floors of a commercial and residential building contrary to ZR §32-10. C6-2A Tribeca East Historic District. C6-2A district.

2019-160-BZ

1 West 29th Street, Block 00831, Lot(s) 33, Borough of **Manhattan, Community Board: 1**. Variance (§72-21) to permit the enlargement of an existing house of worship (Marble Collegiate Reformed Church) to facilitate a direct interior connection between the existing building and a new Fellowship Hall contrary to ZR 43-26 (rear yard). M1-6/C5-2 Individual Historic Landmark building. C5-2/M1-6 district.

2019-161-BZ

55 Prospect Street, Block 00063, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45 Training Dumbo) on portions of the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.

2019-162-BZ

3336-3338 Bedford Avenue, Block 07642, Lot(s) 42 & 53, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (floor area ratio and open space ratio) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2019-163-BZ

678 Broadway, Block 00530, Lot(s) 5, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bar Method) on the second floor of an existing building contrary to ZR 42-10. M1-5B Noho Historic District. M1-5B district.

2019-164-BZ

9 East 16th Street, Block 00844, Lot(s) 8, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Grit Boxing) on portions of the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A Ladies Mile Historic District. C6-2A district.

2019-165-BZ

1375 East 26th Street, Block 07662, Lot(s) 14, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area and open space ratio); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2019-166-A

8 Madigan Place, Block 00835, Lot(s) 159, 161, Borough of **Staten Island, Community Board: 2**. Application to permit the construction of a two-story single-family detached home not fronting on a mapped street contrary to General City Law §36. R1-2 & R1-1 Special Natural Area District. R1-2/R1-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JUNE 25, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 25, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barone Properties, Inc., owner.

SUBJECT – Application July 7, 2016 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance and extension of term for the continued operation of retail and office use (UG 6) which expired on June 1, 2014; Amendment of the configuration of accessory parking lot. Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, Block 5512, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

171-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Lacher/Koepfel Realty Corp., owner.

SUBJECT – Application November 6, 2017 – Extension of Term of a previously approved (§72-21) which permitted the legalization of an existing auto storage facility and the parking of twenty-four (24) cars on the vacant portion of the site which expired on November 22, 2014; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 32-45 75th Street, Block 1171, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

APPEALS CALENDAR

167-14-A

APPLICANT – Eric Palatnik, P.C., for 250 Manhattan LLC, owner.

SUBJECT – Application March 22, 2019 – Extension of Time to Complete Construction of a six-story mixed residential and commercial building un the prior C4-3/R6 zoning regulation approved pursuant to common law doctrine of vested rights which will expire on June 2, 2019.

PREMISES AFFECTED – 250 Manhattan Avenue, Block 2782, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – Application pursuant to Section 666.7(a) of the New York City Charter and Section 1-06 of the Board of Standards and Appeals (the “Board” or “BSA”) Rules of Practice and Procedure, to request that the Board revoke building permit No. 122887224-01-NB (the “Permit”), issued by the New York City Department of Buildings (“DOB”) on September 27, 2017. The application seeks to demonstrate that the permit is not a validly issued building permit because the purported “zoning lot” of which the Development Site is purported to be a part, does not comply with the requirements of the definition of a zoning lot in Zoning Resolution Section 12-10.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

REGULAR MEETING JUNE 25, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 4, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-154-BZ

APPLICANT – Law Office of Lyra J. Altman, for Simcha Gruenburg and Libby Gruenburg, owners.

SUBJECT – Application October 11, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 966 East 24th Street, Block 7587, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-168-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Cohen, owner.

SUBJECT – Application October 22, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-141); open space and lot coverage (ZR § 23-142); rear yard (ZR § 23-47), and side yard regulations (§§ 23-47 & 23-461)). R3-2 zoning district.

CALENDAR

PREMISES AFFECTED – 1769 East 26th Street, Block
6809, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-15-BZ

APPLICANT – Akerman LLP, for CS Cooper Avenue LLC,
owner.

SUBJECT – Application January 18, 2019– Special Permit
(\$73-19) to permit the operation of a daycare center (UG 3)
(*Children of America*) contrary to ZR §42-10. M1-1 zoning
district.

PREMISES AFFECTED – 79-40 Cooper Avenue, Block
3803, 3804, Lot(s) 39, 1, 39, 164, 178, Borough of Queens.

COMMUNITY BOARD #5Q

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 4, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner and
Commissioner Scibetta.

Absent: Commissioner Sheta.

SPECIAL ORDER CALENDARS

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application February 6, 2019 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2017. C2-2/R4 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and extension of time to obtain a certificate of occupancy, which expired on December 9, 2017; and

WHEREAS, a public hearing was held on this application on June 4, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of Nostrand Avenue and Kings Highway, in an R4 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 171 feet of frontage along Nostrand Avenue, 261 feet of frontage along Kings Highway, 16,835 square feet of lot area and is occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1960, when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an existing service station and extension of area and the present uses of gasoline service station, greasing room and office to include minor auto repairs, car washing, sales, utility room and parking and storage of motor vehicles,

with business entrances and show windows within 75 feet of a residence use district, on condition that the work be done in accordance with drawings filed with the application; a brick wall of the same brick used in the accessory building be built along the northern lot line, except where the accessory building or adjacent building are on the line; all pumps be located at least 15 feet from the building line; car washing be limited to non-automatic car washing; the trees presently on Kings Highway be transplanted and located between the curb cuts; all laws, rules and regulations applicable be completed with; and, all permits, including a certificate of occupancy be obtained and all work completed within one (1) year; and

WHEREAS, on May 17, 1983, under BSA Cal. No. 117-83-A, the Board granted an appeal to permit the use of self-service pumps at the site on condition (1) that a trained attendant who possesses a certificate of fitness, in accordance with Section C19-73.0(b)(2) of the Fire Prevention Code, be on duty at all times when the station is open for business; (2) it be the attendant’s duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area of the fuel operation; (3) it be the attendant’s duty to prevent the dispensing of fuel into portable containers; (4) signs reading “NO SMOKING,” “STOP YOUR ENGINE,” “IT IS UNLAWFUL TO DISPENSE GASOLINE INTO PORTABLE CONTAINERS,” and “THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER” be conspicuously posted in clear view of the customer at the dispensing island; (5) portable fire extinguishers be provided and, in type, quantity and location, be acceptable to the Fire Commissioner; (6) all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the laboratory upon which the approval is based; (7) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; (8) the installation and use of coin-operated dispensing devices for fuel be prohibited; (9) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system maintained in a proper operating condition at all times; (10) all controls, devices, fire suppression systems and fire-fighting equipment be maintained in good operating order at all times; (11) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (12) all dispensing nozzles be of the automatic closing type without hold open latches; (13) a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant’s principal control location, and said instructions be at the direction of the Fire Commissioner; (14) the dispensing areas, at all times, be well lit for complete visual control; (15) the permit to operate the station be for a term of five (5) years, to expire on May 17, 1988; (16) all of the conditions in the resolution be conspicuously posted in the attendant’s booth; (17) there be no

MINUTES

servicing or repair of motor vehicles outside of designated areas; (18) mirrors be provided which insure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and the switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; and on further condition that the building, equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within one (1) year, by May 17, 1984; and, all applicable laws, rules and regulations be complied with; and

WHEREAS, on May 17, 1983, under the subject calendar number, the Board reopened and amended the resolution, pursuant to ZR § 11-412, to permit a change in the automotive service to a "self-serve" station for the sale of gasoline only for a term of five (5) years, to expire on May 17, 1988, in order to coincide with the terms and conditions of the resolution granted under BSA Cal. No. 117-83-A, to erect a 24'-4" by 67 foot steel canopy over the two (2) new gasoline pump islands with new self-serve pumps and to eliminate two (2) curb cuts, on condition that the premises conform to revised drawings of proposed conditions filed with the application; the station be operated at all times in such a fashion so as to minimize traffic congestion; all work be completed within one (1) year, by May 17, 1984; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on May 12, 1987, under BSA Cal. No. 1111-86-A, the Board granted an appeal to permit the continued use of self-service gasoline pumps on condition (1) that the permit to operate the station be limited to a term of five (5) years, expiring on May 12, 1992; (2) a trained attendant who possesses a certificate of fitness, in accordance with Section 27-4081(b) (C19-73.0(b)(2)) of the Fire Prevention Code, be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation and be located in an enclosure separated from all other activities by partitions not less than seven (7) feet in height; (3) it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area of the fuel operation; (4) it be the attendant's duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; (5) signs reading "NO SMOKING," "STOP YOUR ENGINE," "IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; (6) portable fire extinguishers be provided and, in type, quantity and location, be acceptable to the Fire Commissioner; (7) all dispensing devices and fire suppression systems be approved by the

Board and be installed in accordance with the requirements of the testing laboratory upon which the approval is based; (8) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; (9) the installation and use of coin-operated dispensing devices for fuel be prohibited; (10) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system maintained in a proper operating condition at all times; (11) all controls, devices, fire suppression systems and fire-fighting equipment be maintained in good operating order at all times; (12) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (13) all dispensing nozzles be of the automatic closing type without hold open latches; (14) a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, and said instructions be at the direction of the Fire Commissioner; (15) the dispensing areas, at all times, be well lit for complete visual control; (16) all of the conditions in the resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of motor vehicles outside of designated areas; (18) mirrors be provided which insure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and the switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; (20) the gasoline station be operated in such a manner which minimizes traffic congestion; (21) the windows and the glass panels of the control booth remain clear and unobstructed at all times; and on further condition that the building, equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within one (1) year, by May 12, 1988; and, all applicable laws, rules and regulations be complied with; and

WHEREAS, on May 12, 1987, under the subject calendar number, the Board reopened and further amended the resolution, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 1111-86-A, to permit the erection of a new 30'-4" by 57'-8" steel canopy over two (2) new gasoline pump islands with new self-serve pumps and to alter the existing office and sales area of the accessory building to accommodate an attendant's booth, on condition that the premises conform to revised drawings of proposed conditions filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year, by May 12, 1988; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on December 9, 2014, under the subject calendar number, the Board reopened and further amended the

MINUTES

resolution to permit the conversion of the building used for a gasoline service station (Use Group 16) to an accessory convenience store, on condition that all work substantially conform to drawings filed with the application; the building have a maximum of 2,520 square feet of floor area (0.15 floor area ratio ("FAR")); the site be maintained free of debris and graffiti; signage be in accordance with C2 district regulations; landscaping and buffering be maintained in accordance with the BSA-approved plans; lighting be directed downward and away from adjoining residences; the above conditions be noted in the certificate of occupancy; the remediation of the spill be in accordance with New York State Department of Environmental Conservation ("DEC") requirements; a certificate of occupancy be obtained by December 9, 2015; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on July 12, 2016, under the subject calendar number, the Board reopened and further amended the resolution to extend the time to obtain a certificate of occupancy to December 9, 2017, on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; all conditions from the prior resolution not specifically waived by the Board remain in effect; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that all construction at the site is complete; and

WHEREAS, at hearing, the Board raised concerns regarding the presence and location of a generator on the site; and

WHEREAS, in response, the applicant represented that the generator was installed at the site pursuant to permits as part of a New York State Fuel NY Initiative, an emergency preparedness program launched in response to Superstorm Sandy and aimed at ensuring continuity of operations of gas stations for first responders and community residents during power disruptions; and

WHEREAS, by letter dated May 25, 2019, the Fire Department states that a review of Fire Department records

indicates that the subject site is current with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; cooking equipment located in the convenience store is protected by an approved ansul system that was inspected and tested satisfactorily by the Fire Department; and, the Fire Department has no objection to the Board rendering a decision on the application; and

WHEREAS, based upon its review of the record, the Board finds that a two (2) year extension of time to obtain a certificate of occupancy is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, as amended through July 12, 2016, so that, as further amended, this portion of the resolution reads: "to grant a two (2) year extension of time to obtain a certificate of occupancy to June 4, 2021, *on condition*:

THAT the generator shall be surrounded by plantings so as to be concealed from view from the street and such plantings shall be replaced as necessary to be maintained in a first-class condition;

THAT the building shall have a maximum of 2,520 square feet of floor area (0.15 floor area ratio ("FAR"));

THAT the site shall be maintained free of debris and graffiti;

THAT signage shall be in accordance with C2 district regulations;

THAT landscaping and buffering shall be maintained in accordance with the BSA-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

THAT the remediation of the spill shall be in accordance with New York State Department of Environmental Conservation ("DEC") requirements;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the station shall be operated at all times in such a fashion so as to minimize traffic congestion;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 698-59-BZ") shall be obtained within two (2) years, by June 4, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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

MINUTES

related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

67-91-BZ

APPLICANT – Eric Palatnik, P.C., for BSM Management, LLC, owner; Bolla Operating Corp., lessee.

SUBJECT – Application February 6, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance which permitted the operation of an Automotive Service Station (Gulf) (UG 16B) which expired on March 28, 2018; Waiver of the Board’s rules C2-2/R3-2 zoning district.

PREMISES AFFECTED – 54-55 Little Neck Parkway aka 260-01 Horace Harding Expressway, Block 8274, Lot 135, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and extension of time to obtain a certificate of occupancy, which expired on March 28, 2018; and

WHEREAS, a public hearing was held on this application on June 4, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the subject site is located on the northeast corner of Little Neck Parkway and Nassau Boulevard, partially within an R1-2 zoning district and partially within an R4 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 231 feet of frontage along Little Neck Parkway, 100 feet of frontage along Nassau Boulevard, 17,100 square feet of lot area and is occupied by an automotive service station (Use Group (“UG”) 16B) with six (6) multiple product dispensers (“MPDs”), one- (1) story accessory convenience store and 11 off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 1947, when, under BSA Cal. No. 721-41-BZ, the Board granted a variance to permit the construction and use of the premises as a gasoline service station and for minor repairs and accessory uses for a term of ten (10) years, to expire on July 15, 1957, as proposed and indicated on plans filed with the application, on condition that the premises be laid out substantially as indicated on such plans; complete working drawings be submitted to the Board for further consideration and for imposing of conditions before same be filed with the Borough Superintendent; such plans be filed within three (3) months and after the approval thereof, all permits required be obtained and all work

completed within one (1) year from the date of such approval; and

WHEREAS, on May 2, 1950, under BSA Cal. No. 721-41-BZ, the Board amended the variance to approve plans as being in substantial compliance with the July 1947 grant, on condition that the work on such drawings be carried out as proposed except that the fences and walls on the lot line be steel picket fences on a masonry base not less than two (2) feet in height to a total height of 5’-6””; signs be restricted to a permanent sign attached to the façade of the accessory building and the illuminated globes of the pumps excluding all roof signs and all temporary signs but permitting one (1) post standard within the building line for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not over four (4) feet; minor repairs may be permitted within the accessory building provided such repairs are by hand tools only under Section 7f for a similar term; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; all construction as proposed be within the lines of Little Neck Parkway as proposed to be widened; all permits be obtained and all work completed within one (1) year, by May 2, 1951; and

WHEREAS, on September 12, 1950, under BSA Cal. No. 721-41-BZ, the Board further amended the resolution to extend the term of the variance for fifteen (15) years, to expire on September 12, 1965; and

WHEREAS, on July 21, 1964, under BSA Cal. No. 721-41-BZ, the Board further amended the resolution to permit a total of ten (10) 550-gallon approved storage tanks as shown on plans filed with the application; and

WHEREAS, on September 28, 1965, under BSA Cal. No. 721-41-BZ, the Board further amended the resolution to extend the term of the variance for ten (10) years, to expire on September 28, 1975, on condition that the sidewalks, curbs, curb cuts, fences and landscaping comply with plans filed with the application when the City makes the street improvements; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained; and

WHEREAS, on May 20, 1969, under BSA Cal. No. 66-69-BZ, the Board, pursuant to ZR § 11-412, permitted the enlargement in lot area and floor area of the existing automotive service station with accessory uses previously before the Board, on condition that all work substantially conform to plans filed with the application; the regrading, repaving and drainage of the lot be to the satisfaction of the Department of Buildings (“DOB”); all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by May 20, 1970; and

WHEREAS, on June 2, 1970, under BSA Cal. No. 66-69-BZ, the Board further amended the May 1969 resolution to extend the time to substantially complete construction pursuant to the previous grant by one (1) year, expiring May 20, 1971, on condition that the two (2) 25-foot curb cuts on Nassau Boulevard conform to revised drawings of proposed conditions filed with the application; a copy of the resolution

MINUTES

as amended, and a certified copy of the Board-approved drawings, be permanently posted in the office of the automotive service station; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 28, 1975, under BSA Cal. No. 66-69-BZ, the Board further amended the resolution to extend the term of the variance, previously granted under BSA Cal. No. 721-41-BZ, for ten (10) years, to expire on October 28, 1985, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on February 15, 1984, under BSA Cal. No. 1058-83-A, the Board granted an appeal to permit the installation and use of self-service devices in the gasoline service station on condition that (1) a trained attendant who possesses a certificate of fitness, as per Section C19-73.0(b)(2) of the Fire Prevention Code of the City of New York, be on duty at all times when the station is open for business; (2) it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area of the fuel operation; (3) it be the attendant's duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; (4) signs reading "NO SMOKING," "STOP YOUR ENGINE," "IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; (5) portable fire extinguishers be provided and, in type, quantity and location, be acceptable to the Fire Commissioner; (6) all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the laboratory upon which approval is based; (7) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; (8) the installation and use of coin-operated dispensing devices for fuel be prohibited; (9) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system that is maintained in a proper operating condition at all times; (10) all controls, devices, fire suppression systems and fire-fighting equipment be maintained in good operating order at all times; (11) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (12) all dispensing nozzles be of the automatic closing type without hold open latches; (13) a list of emergency procedures and instructions be at the direction of the Fire Commissioner; (14) the dispensing areas, at all times, be well lit for complete visual control; (15) the permit to operate the station be for a term of five (5) years, to expire on February 15, 1989; (16) all of the conditions set forth in the resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of

motor vehicles outside of designated areas; (18) mirrors be provided which insure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and that these switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; (20) the gasoline station be operated in such a manner which minimizes traffic congestion; (21) the windows and the glass panels of the control booth remain clear and unobstructed at all times; and on further condition that the building, equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within one (1) year, by February 15, 1985; and, all applicable laws, rules and regulations be complied with; and

WHEREAS, on February 15, 1984, under BSA Cal. No. 66-69-BZ, the Board, pursuant to ZR § 11-412, further amended the resolution, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 1058-83-A, to permit the construction of a 28'x48' canopy; to install new gasoline pump islands with new self-serve dispensers; to change the office and sales area of the accessory building to an attendant's office; on condition that the premises conform to revised drawings of proposed conditions filed with the application; the surface of the lot be resurfaced; all planting areas be restored with new shrubbery and be maintained and promptly replaced when necessary; the parking of cars on the premises be limited to five (5) cars awaiting service; there be no parking of motor vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year, by February 15, 1985; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on March 17, 1992, under the subject calendar number, the Board, pursuant to ZR § 11-411, permitted the reestablishment of the expired variance permitting an automotive service station (UG 16) on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no sale of cars on the lot; there be no parking of cars on the sidewalk; there be no storage of vehicles on the lot; there be no automotive repairs conducted on the open lot; all fencing be in accordance with the BSA-approved plans; the existing picket fence be painted; all landscaping be installed and maintained in accordance with BSA-approved plans; all site lighting be directed downward and away from adjacent residential uses; the grant be for a term of ten (10) years, to expire on March 17, 2002; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by March 17, 1996; and

WHEREAS, on October 19, 2004, under the subject

MINUTES

calendar number, the Board amended the March 1992 resolution to permit a minor reconfiguration of the sales area, private office and utility room to facilitate the sale of convenience store items and the placement of a container for storage and refrigeration of soft drinks and extended the term for an additional ten (10) years, to expire on March 17, 2012, on condition that all work substantially conform to drawings filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; all signage conform to applicable zoning district requirements; the conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on December 11, 2012, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on March 17, 2022, on condition that the use substantially conform to drawings filed with the application; landscaping be maintained in accordance with the BSA-approved plans; the site be maintained free of debris and graffiti; no parking be permitted on the landscaped area at the rear of the site; signage comply with C1 zoning district regulations; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on March 28, 2017, under the subject calendar number, the Board further amended the resolution to permit the enlargement of the existing one- (1) story building, the conversion of service bays to an accessory convenience store and the installation of new MPDs, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on March 17, 2022; there be a payment screen at each fueling position featuring a “Help” button that, when pressed, activates an intercom system with the attendant area; there be a “Honk for Assistance” sign at each fueling position; landscaping be installed and maintained in accordance with the Board-approved plans; there be no sale of cars on the lot; there be no parking of cars on the sidewalk; there be no parking on the landscaped area at the rear of the site; there be no storage of vehicles on the lot; there be no automotive repairs conducted on the open lot; all fencing be in accordance with the Board-approved plans; the existing picket fence be painted; all site lighting be directed downward and away from adjacent residential uses; the site be maintained free of debris and graffiti; any graffiti located on the site be removed within 48 hours; all signage conform to C1 zoning district regulations;

the above conditions be listed on the certificate of occupancy; a revised certificate of occupancy be obtained within one (1) year, by March 28, 2018; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to objections cited and filed by DOB; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, at hearing, the Board noted that the site was well maintained, but raised concerns regarding compliance with the conditions that there be a payment screen at each fueling position featuring a “Help” button that, when pressed, activates an intercom system with the attendant area and the “Honk for Assistance” sign at each fueling position, as well as the presence of a generator and paving in an area requiring landscaping as per the approved plans; and

WHEREAS, in response, the applicant represented that the keypads on the MPDs at the site include a help button that communicates with the station attendant, but the operator abandoned the “Honk for Assistance” signs out of fear that it would create a disturbance to the neighboring senior center; and

WHEREAS, by letter dated May 25, 2019, the Fire Department states that a review of Fire Department records indicates that the subject site is current with its Fire Department permits with respect to the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; the Fire Department has no records of testing the ansul equipment protecting the cooking equipment located in the convenience store—a referral has been submitted to the Bureau’s Range Hood Unit to inspect and issue test orders for the ansul equipment; and, the Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding orders; and

WHEREAS, based upon its review of the record, the Board finds that a two (2) year extension of time to obtain a certificate of occupancy is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated March 17, 1992, as amended through March 28, 2017, so that

MINUTES

as further amended this portion of the resolution reads: “to grant a two (2) year extension of time to obtain a certificate of occupancy to June 4, 2021, *on condition*:

THAT the term of the variance grant shall expire on March 17, 2022;

THAT a call button for the disabled shall be located at a distance and height accessible from a driver-side window;

THAT there shall be a payment screen at each fueling position featuring a “Help” button that, when pressed, activates an intercom system with the attendant area;

THAT landscaping shall be installed and maintained in accordance with the Board-approved plans;

THAT there shall be no sale of cars on the lot;

THAT there shall be no parking of cars on the sidewalk;

THAT there shall be no parking on the landscaped area at the rear of the site;

THAT there shall be no storage of vehicles on the lot;

THAT there shall be no automotive repairs conducted on the open lot;

THAT all fencing shall be in accordance with the Board-approved plans;

THAT the existing picket fence shall be maintained painted;

THAT all site lighting shall be directed downward and away from adjacent residential uses;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti located on the site shall be removed within 48 hours;

THAT all signage shall conform to C1 zoning district regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 67-91-BZ”) shall be obtained within two (2) years, by June 4, 2021;

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 June 4, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

126-93-BZ

APPLICANT – Sohail Humayun, for Majid Eljamal, owner.
SUBJECT – Application February 2, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on January 18, 2015; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 1225 East 233rd Street, Block 4955, Lot 1, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of the term, pursuant to ZR § 11-411, of a previously granted variance that permitted the use of the site as a gasoline service station with accessory uses, which expired on January 18, 2015; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with a continued hearing on June 4, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, the Bronx, recommends approval of this application and requests that a certificate of occupancy indicating the sale of secondhand vehicles on the site be obtained; and

WHEREAS, the subject site is bound by East 233rd Street to the south, Baychester Avenue to the west and De Reimer Avenue to the east, in an R4 zoning district, in the Bronx; and

WHEREAS, the site has approximately 163 feet of frontage along East 233rd Street, 106 feet of frontage along Baychester Avenue, 101 feet of frontage along De Reimer Avenue and is occupied by a gasoline service station with three (3) multiple product dispensers (“MPD”), a one- (1) story accessory building with sales, lubricatorium, minor auto repairs and non-automatic car wash, and accessory off-street parking; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1933, when, under BSA Cal. No. 67-33-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, for a period of two (2) years, on a portion of the existing site, on condition that the gasoline selling station be confined to the portion of the plot situated at the intersection of Baychester Avenue and East 233rd Street for a distance of approximately 55 feet on Baychester Avenue and 75 feet on East 233rd Street; along the interior lot lines there be

MINUTES

erected a substantial woven wire fence, at least five (5) feet in height; the accessory buildings erected on the plot be not over one (1) story in height with no cellars below; any grease pits that are installed be housed in buildings not over one (1) story in height, with the front left open, and no excavations under same, except for the grease racks; all pumps installed on the property be at least ten (10) feet away from any street building line; the lot be leveled and covered with crushed stone or similar material; the balance of the plot under appeal be used for no other non-conforming use or for the storage or dumping of automobiles or other refuse; there be not more than one (1) entrance from Baychester Avenue and not over two (2) from East 233rd Street; the curb cuts opposite these entrances not be over 14 feet in width and no entrance nearer to the intersection of Baychester Avenue and East 233rd Street than ten (10) feet; there be no portable gasoline tanks or pumps used on or from the property; all advertising of non-conforming uses be restricted to the illuminated globes of the pumps and to flat signs placed against the accessory buildings; and, all permits be obtained within three (3) months, by September 13, 1933, and all work completed within six (6) months, by December 13, 1933; and

WHEREAS, on April 21, 1936, under BSA Cal. No. 67-33-BZ, the Board amended the June 1933 resolution to extend the term for the gas station located on an expanded tax lot 1—then-described as an irregular shaped plot of ground having a frontage of 117.6 feet on East 233rd Street and 55.6 feet on Baychester Avenue—for two (2) years, to expire on April 21, 1938, on condition that other than as amended, the resolution be substantially complied with and the wire fence be located substantially on the interior lot lines of the area permitted in the resolution; and

WHEREAS, on May 14, 1940, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to extend the term for two (2) years, to expire on May 14, 1942, on condition that other than as amended the resolution be complied with in all respects; any signs in addition to those permitted be removed; and, the wire fence be constructed and maintained on the interior lot lines of the area, as permitted by the resolution; and

WHEREAS, on May 12, 1942, and June 27, 1944, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution and extended the term for periods of two (2) years, the latter of which expired on June 27, 1946; and

WHEREAS, on May 21, 1946, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on May 21, 1951, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained; and

WHEREAS, on April 17, 1951, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on April 17, 1956, on condition that other than as amended the resolution be complied with in all respects; and, all permits be obtained, all work completed and a certificate of occupancy

obtained within six (6) months, by October 17, 1951; and

WHEREAS, on May 22, 1956, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to permit an extension of use, to a gasoline service station, lubrication minor auto repairs, office, storage, car washing, parking and storage of motor vehicles, by adding that in the event the new owner desires to enlarge the gasoline station site previously permitted solely on tax lot 1 to include adjacent tax lot 5 so as to increase its frontage along Baychester Avenue to approximately 105 feet, such addition may be made and the rearrangement of the station may be as shown on plans filed with the application, on condition that only such changes as are shown thereon be permitted; curb cuts be restricted to two (2) on East 233rd Street and two (2) on Baychester Avenue, each 30 feet in width; there be erected on the new lot line to the north a woven wire fence of the chain link type on a masonry base to a total height of not less than 5'-6" and a similar fence continued to the lot lines to the north and east through to East 233rd Street; the sidewalk and curbing abutting the premises be reconstructed or repaired to the satisfaction of the Borough President; pumps be of an approved low type erected where shown on such plans; at the intersection there be erected a block of concrete not less than 12 inches in height, as shown; such portable fire fighting appliances be installed as the Fire Commissioner directs; under Section 7h, there may be parking and storage of motor vehicles; under Section 7i, there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building; where not occupied by accessory building and pumps, the premises be paved with concrete or asphalt; the term of the variance may be extended for ten (10) years, to expire on May 22, 1966; in all other respects, the resolution be complied with; all permits required be obtained including a new certificate of occupancy and all work completed within the requirements of Section 22A of the Zoning Resolution, by May 22, 1957; and

WHEREAS, on May 14, 1957, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution as to the time within which to obtain permits and complete the work on condition that, in view of the statement by the applicant that plans had been approved by DOB, all permits required, including a new certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by May 14, 1958; and

WHEREAS, on April 22, 1958, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution as to the time within which to obtain permits and complete the work on condition that all permits required, including a certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by April 22, 1959; and

WHEREAS, on April 28, 1959, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution as to the time within which to obtain permits and complete the work on condition that, in view of the statement by the

MINUTES

applicant that plans had been approved by DOB and work is ready to start, all permits required, including a certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by April 28, 1960; and

WHEREAS, on November 22, 1960, under BSA Cal. No. 67-33-BZ, the Board granted a variance, pursuant to Sections 7a, 7f and 7i of the Zoning Resolution, for tax lots 1, 5 and 57 to permit the reconstruction and extension in an area of an existing gasoline service station, previously solely on tax lots 1 and 5, with the additional uses of lubricatorium, minor auto repairs, non-automatic car washing, storage room, office and sales, ground sign and parking and storage of motor vehicles in the open area, for a term of 15 years, to expire on November 22, 1975, on condition that the work be done in accordance with the drawings filed with the application; curbs and sidewalks on all streets be put in good condition to the satisfaction of the Borough President; all laws, rules and regulations applicable be complied with; and, all permits be obtained, all work completed and a certificate of occupancy be obtained within the provisions of Section 22A of the Zoning Resolution, by November 22, 1961; and

WHEREAS, on December 21, 1961, December 18, 1962, and February 4, 1964, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for periods of one (1) year, the latter of which expired on February 4, 1965, on further condition that a certificate of occupancy be obtained; and

WHEREAS, on April 28, 1964, under BSA Cal. No. 67-33-BZ, the Board further amended the resolution to permit the site to be redesigned, rearranged and constructed substantially as shown on revised drawings of proposed conditions filed with the application, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on January 18, 1995, under the subject calendar number, the Board, pursuant to ZR § 11-411, permitted the reestablishment of an expired variance for a gasoline station with accessory uses (Use Group (“UG”) 16), noting that the use had remained continuously at the premises since the expiration of the term of the variance, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; fencing be repaired in accordance with BSA plans; the term be limited to ten (10) years, to expire on January 18, 2005; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by January 18, 1999; and

WHEREAS, October 25, 2005, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the January 1995

resolution to extend the term of the variance for ten (10) years, to expire on January 18, 2015, and to permit an extension of the time to obtain a certificate of occupancy, by October 25, 2006, on condition that all work substantially conform to drawings filed with the application; the term of the grant be for ten (10) years, to expire on January 18, 2015; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the applicant install a 5'-0" high fence as indicated on the BSA-approved plans; the conditions appear on the certificate of occupancy; conditions from prior resolution(s) not specifically waived by the Board remain in effect; a new certificate of occupancy be obtained within one year, by October 25, 2006; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, in addition, because this application was filed more than two (2) years, but less than ten (10) years, after the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the “Board's Rules”), of § 1-07.3(b)(3)(i) of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that use, layout, egress or occupancy at the subject site have not changed since the prior Board grant and the site continues to operate Monday through Friday, 6:00 a.m. to 6:00 p.m., Saturday, 6:00 a.m. to 3:00 p.m., and is closed on Sunday; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the poor maintenance of the site including the poor condition of the asphalt, presence of excessive debris and empty tire racks on the site and the storage of tires on the roof of the one- (1) story accessory building; and

WHEREAS, in response, at the direction of the Board, the applicant provided evidence to demonstrate the resurfacing of the asphalt, removal of the tire repair operation from the site as well as the removal of the tires from the roof of the accessory building, and improved landscaping at the site; and

WHEREAS, by letter dated March 9, 2019, the Fire Department states that a review of Fire Department records indicates that the subject site is current with its Fire Department permits with respect to storage of combustible

MINUTES

liquids, leak detection equipment, underground storage tank and fire suppression (dry-chemical) system, and the Fire Department has no objection to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(3)(i) of its Rules of Practice and Procedure and *amends* the resolution, dated January 18, 1995, as amended through October 25, 2005, so that, as amended, this portion of the resolution reads: “to extend the term of the variance for a term of ten (10) years, expiring January 18, 2025; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “May 2, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 18, 2025;

THAT ground cover, low growing ivy, juniper or equivalent shrubbery shall be planted and maintained in planting beds to fill in the area between the trees at the site, as shown on the Board-approved plans, and replaced as necessary to be maintained in first-class condition;

THAT there shall be no sale or storage of tires on the site;

THAT fencing shall be properly maintained as shown on the Board-approved plans;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 126-93-BZ”) shall be obtained within one (1) year, by June 4, 2020; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

177-06-BZ

APPLICANT – Law Office of Steven Simicich, for 1840 EMAB, LLC, owner.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) to permit the continued operation of an Automotive Repair Facility (UG 16B) with the sale of cars which expired on April 10, 2017; Amendment to permit the conversion of accessory storage area into an additional automotive service bay and changes to on-site planting; Waiver of the Board’s Rules. C2-2R3-2 zoning district.

PREMISES AFFECTED – 1840 Richmond Terrace, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, extension of the term, pursuant to ZR § 11-411, of a previously granted variance that legalized the use of the site as an automotive repair station with the sale of used cars, which expired on April 10, 2017, and an amendment to permit the conversion of the accessory storage area within the existing building into an additional automotive repair bay; and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with continued hearings on December 4, 2018, and April 30, 2019, and then to decision on June 4, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Richmond Terrace and Clove Road, in an R3-2 (C2-2) zoning district, on Staten Island; and

WHEREAS, the site has approximately 97 feet of frontage along Richmond Terrace, 100 feet of frontage along Clove Road, 9,700 square feet of lot area and is occupied by a one- (1) story automotive repair station with three (3) repair bays and accessory off-street parking; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 9, 1957, when, under BSA Cal. No. 51-56-BZ, the Board granted a variance for a term of 15 years, to expire on April 9, 1972, to permit the premises to be occupied as a gasoline service station with accessory uses, substantially as proposed and as indicated on plans filed with the application, on condition that all buildings and uses on the site be removed and the premises graded substantially to the grades of Richmond Terrace and Clove Road, and constructed and arranged as indicated on such

MINUTES

amended plans filed with the application; the accessory building be of the design and arrangement indicated, located toward the rear of the plot, be faced with face brick on all sides, have no cellar and comply in all respects with the requirements of the Building Code; the entrances to the toilet rooms be relocated so as not to be contiguous; the size of the plot be as indicated on such revised plans in view of the proposed widening of Richmond Terrace, but such portion of the premises may be temporarily used in connection with the gasoline service station, provided such portion is surfaced as hereinafter required on the main portion of the lot; pumps be of a low approved type, erected not nearer than 15 feet to the new street building line, as it will be after widening; the number of gasoline storage tanks not exceed ten (10) 550-gallon approved tanks; the balance of the premises where not occupied by accessory building and pumps be paved with concrete or asphaltic paving, including the portion to be taken later for the widening of Richmond Terrace; along the side lot lines to the east and south there be erected a woven wire fence of the chain link type, erected on a masonry base to a total height of 5'-6"; suitable masonry terminating posts be erected at the termination of walls at the street lines; curb cuts be restricted to two (2) on Richmond Terrace, each 30 feet in width and two (2) of similar width to Clove Road, located where shown; there be erected within the building lines at the intersection a block of masonry not less than 12 inches in height, extending for five (5) feet along each building line from the intersection; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; signs be restricted to permanent signs attached to the façade of the accessory building, excluding all roof signs and temporary signs, but permitting the erection within the intersection of a post standard of supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale, which sign may extend not more than four (4) feet beyond the building line; sidewalks and curbing abutting the premises on the two (2) streets be reconstructed or repaired to the satisfaction of the Borough President; the requirements of the resolution adopted by the Board on April 9, 1957, under BSA Cal. No. 187-57-A also be complied with; under Section 7i for a similar term, there may be permitted motor vehicle repairing with hand tools only for adjustments, maintained solely within the accessory building; and, all permits required be obtained and all work completed and a certificate of occupancy obtained within the requirements of Section 22A, by April 9, 1958; and

WHEREAS, on April 9, 1957, under BSA Cal. No. 187-57-A, the Board, pursuant to the powers vested in the Board by Section 35 of the General City Law, granted an appeal to permit the portion of the premises along Richmond Terrace to be occupied in conjunction with the gasoline service station permitted by resolution adopted April 9, 1957, under BSA Cal. No. 51-56-BZ, until such widening takes place, on condition that such portion of the site to be taken for street widening as proposed not be used for any purposes except for driving over, and such portion be paved

in accordance with the requirements of BSA Cal. No. 51-56-BZ; and, upon acquisition by the City of such space for street widening the award be determined by the Court; and

WHEREAS, on October 27, 1959, under BSA Cal. No. 51-56-BZ, the Board amended the April 1957 variance resolution to permit the existing pump island facing Richmond Terrace be set back 16'-4" from the present building line; the existing post standard for supporting a sign may be illuminated, advertising only the brand of gasoline on sale; the sign may remain at the corner and may extend not more than four (4) feet beyond the present building line, all as shown on approved plans filed with the application; after the widening of Richmond Terrace, the pump island be set back 15 feet from the new building line and the sign be relocated to the new building line and may project not more than four (4) feet over the new building line, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on March 13, 1973, under BSA Cal. No. 51-56-BZ, the Board waived its Rules of Procedure, reopened and further amended the resolution to extend the term for ten (10) years, to expire on March 13, 1983, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on September 5, 1989, under BSA Cal. No. 80-88-BZ, the prior variance having expired, the Board granted a special permit, pursuant to ZR § 73-211, to legalize a one- (1) story automotive service station on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the special permit be limited to a term of ten (10) years, to expire on September 5, 1999; the hours of operation be limited to Monday through Thursday, 7:00 a.m. to 6:00 p.m.; Friday, 7:00 a.m. to 9:00 p.m.; Saturday, 7:00 a.m. to 11:00 p.m.; and, Sunday, 11:00 a.m. to 6:00 p.m.; the required fencing on the eastern and southern lot lines, as shown on the drawing marked "Received—August 8, 1989," be maintained in good condition at all times and repaired when necessary; signs comply with ZR § 73-211(e)(1); the site be kept clean and free of graffiti; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings ("DOB") for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70, by September 5, 1993; and

WHEREAS, on March 18, 2003, under BSA Cal. No. 322-02-BZ, the Board granted another special permit, pursuant to ZR § 73-211, again legalizing use of the site as an automotive service station and permitting the addition of a new steel canopy, concrete dispenser island with dispensers and double-wall fiberglass tanks, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the hours of operation be limited to Monday through Thursday, 7:00 a.m.

MINUTES

to 9:00 p.m.; Friday, 7:00 a.m. to 9:00 p.m.; Saturday, 7:00 a.m. to 11:00 p.m.; and, Sunday, 11:00 a.m. to 6:00 p.m.; landscaping be provided and maintained in accordance with BSA-approved plans; there be no used car sales on the premises; there be no parking of cars on the sidewalk at any time; there be no automobile vacuums on the premises; the term of the special permit be limited to ten (10) years, expiring March 18, 2013; construction be completed in accordance with ZR § 73-70, by March 18, 2007; a new certificate of occupancy be obtained within two (2) years, by March 18, 2005; the conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on April 10, 2007, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-413, reinstated the variance, originally granted to the site in 1957 and legalized a change in use, from a gasoline service station to an automotive repair station with the sale of used cars, on condition that any and all use substantially conform to drawings as they apply to the objection, filed with the application; the grant be for a term of ten (10) years, to expire on April 10, 2017; landscaping and fencing be installed and maintained as per the BSA-approved plans; the number of used cars for sale on display at the site be limited to nine (9); all exterior lighting be directed away from adjacent residential uses; the above conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; all signage comply with zoning district regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that use has been continuous since the expiration of term in 2017, and, absent such waiver, substantial prejudice would result and

jeopardize the business and its service to the community; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, the applicant also seeks an amendment to legalize the conversion of the accessory storage room in the existing one- (1) story automotive repair building into an additional repair bay, for a total of three (3) repair bays; and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, which has existed in its current dimensions and location on the site since the Board's original grant of the variance in 1957, and, instead, proposes to legalize alterations to the interior only to convert the storage area of the existing building to an additional repair bay, thus, ZR § 11-412 is not triggered by the alteration; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding poor condition of the asphalt on the site, the presence of barbed wire and associated framework on the site fencing, and the poor condition of the landscaping on the site, which was required by the Board's prior grants; and

WHEREAS, in response, the applicant provided photographs to demonstrate the resurfacing of the site's asphalt, the removal of the barbed wire and framework from the fencing, and the installation of sufficient planting beds with landscaping replaced; and

WHEREAS, by letter dated December 1, 2018, the Fire Department states that a review of Fire Department records indicates that the subject site is current with their Fire Department permits with respect to the storage of combustible liquids and motor vehicle repair shop; the permits expire in September 2020; and that the Fire Department has no objection relative to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated April 10, 2007, so that, as amended, this portion of the resolution reads: "to legalize the conversion of the accessory storage area in the existing one- (1) story building into an additional repair bay, for a total of three (3), and extend the term of the variance for a term of ten (10) years, expiring April 10, 2027; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "April 4, 2018"-Seven (7) sheets and "April 17, 2019"-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 10, 2027;

THAT fencing, asphalt and landscaping shall be maintained as shown on the BSA-approved plans, replaced or repaired as necessary to maintain first-class condition;

MINUTES

THAT landscaping, in particular, shall be maintained in accordance with the plan sheets approved in connection with this application labeled “Proposed Planting Plan” and “Planting Notes and Details;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises be removed within 48 hours;

THAT the use of barbed wire is not permitted at the site;

THAT the number of used cars for sale on display at the site shall be limited to nine (9);

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 177-06-BZ”) shall be obtained within one (1) year, by June 4, 2020; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

21-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co., owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application November 1, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2017; Waiver of the Board’s Rules. M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of the term of a special permit, previously granted pursuant to ZR § 73-36, which expired on November 1, 2017; and

WHEREAS, a public hearing was held on this application on June 4, 2019, after due notice by publication

in *The City Record*, and then to decision on that date; and

WHEREAS, the subject site is located on the west side of Bronxdale Avenue, approximately 675 feet south of Van Nest Avenue, in an M1-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 252 feet of frontage along Bronxdale Avenue, 299,769 square feet of lot area, and is occupied by an existing two- (2) story commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) occupies 31,949 square feet of floor area on a portion of the first floor of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site May 6, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, operated as “New York Sports Club,” on the first floor of the existing two- (2) story building on condition that all work substantially conform to approved drawings filed with the application; the term of the grant expire on November 1, 2017; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by the Department of Buildings (“DOB”); fire safety measures be installed and/or maintained as shown on the Board-approved plans; all sound attenuation measures be installed and maintained as per the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit; and

WHEREAS, the applicant represents that the operator of the PCE, New York Sports Club, has continued operated at the subject site since the opening in 2007, but now maintains the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, by letter dated May 25, 2019, the Fire Department states that the facility, to date, has not obtained an operating permit from DOB nor has maintained fire safety measures; the Bureau’s Licensed Public Place of Assembly unit (“LPPA”) has issued two (2) violation orders for failure to obtain an operating permit and for failure to

MINUTES

maintain the fire alarm system; the Department issues a conditional letter of no objection to extend the special permit for this application; should there be a failure to obtain the operating permit from DOB in a timely manner, the Department will request a compliance hearing before the Board and seek revocation of the special permit; and, the Department has no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated May 6, 2008, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on November 1, 2027, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘February 8, 2019’-Three (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2027;

THAT a public assembly permit for the PCE space shall be obtained;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT Local Law 58/87 compliance be as reviewed and approved by DOB;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT all sound attenuation measures shall be maintained as per the Board-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 21-08-BZ”) shall be obtained within one (1) year, by June 4, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application March 6, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a three-story community facility building occupied as a house of worship (UG 4) which expired on May 6, 2018; Waiver of the Board’s Rules. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the construction of a three- (3) story community facility building to be occupied as a house of worship (Use Group (“UG”) 4), and expired on May 6, 2018; and

WHEREAS, a public hearing was held on this application on May 7, 2019, with a continued hearing on June 4, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Utica Avenue, between Beverly Road and Clarendon Road, in a C8-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 160 feet of frontage along Utica Avenue, 100 feet of depth, 16,000 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site May 2, 2006, when under BSA Cal. No. 289-05-BZ, the Board granted special permits, pursuant to ZR §§ 73-431 and 73-50, to allow, on a lot located in a C8-1 zoning district abutting an R4 zoning district, the proposed construction of a church with an accessory banquet hall, without the required rear yard setback from the district boundary and the required number of parking spaces, contrary to ZR §§ 33-292 and 36-21, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no change in ownership, operator or control of the site without the prior consent of the Board; 27 accessory parking spaces for the

MINUTES

church be located at 1117 Utica Avenue (Block 4761, Lot 58); there be no commercial parking at 1117 Utica Avenue; the church obtain and maintain an operative lease with the owner of 1124-28 Utica Avenue (Block 4760, Lot 24) for the use of 40 accessory parking spaces on Sundays; the above conditions appear on the certificate of occupancy; the church execute and record a restrictive declaration limiting the use of 1117 Utica Avenue to accessory parking for the church; said restrictive declaration be executed and recorded and submitted to the Department of Buildings (“DOB”) for review and approval prior to issuance of any building permit for the proposed construction; the lease with the owner of 1124-28 Utica Avenue be submitted to DOB for review and approval prior to the issuance of any certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on May 6, 2014, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, on a site within a C8-1 zoning district, a three-(3) story community facility building to be occupied as a house of worship (Use Group 4), which does not comply with distance from a district boundary, height and setback, sky-exposure plane, and parking regulations, and is contrary to ZR §§ 33-292, 33-432, and 36-21, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the building parameters be: three (3) stories; a maximum building height of 59’-11”¹; a maximum wall height of 55’-8”¹; a maximum floor area of 36,970 square feet (2.31 FAR)¹; and a minimum of 34 parking spaces, as illustrated on the BSA-approved plans; the use be limited to a house of worship (Use Group 4A), and accessory uses; DOB will not issue a certificate of occupancy until the applicant has provided it with New York City Department of Environmental Protection’s (“DEP”) approval of the Remedial Closure Report; acceptable interior air quality levels be maintained in accordance with the alternates means of ventilation design measures noted on the BSA-approved plans; no commercial catering or retail occur on the site; any change in the control or ownership of the building require the prior approval of the Board; the above conditions be listed on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to

1 The cited resolution erroneously indicates that the maximum permitted community facility floor area 36,535 square feet (2.28 FAR), but a review of the plans approved by the Board in connection with this grant reveals that the Board permitted a maximum floor area of 36,970 square feet.

the specific relief granted; construction proceed in accordance with ZR § 72-23, by May 6, 2018; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(c)(2) of the Board’s Rules to permit the filing of this application; and

WHEREAS, the applicant represents that construction has been delayed due to loan and fundraising issues, but anticipates that construction and sign-off of the subject building will be completed within approximately 16 to 24 months; and

WHEREAS, based upon its review of the record, the Board finds that a four (4) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(c)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated May 6, 2014, so that as further amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to May 6, 2022, *on condition*:

THAT substantial construction shall be completed, pursuant to ZR § 72-23, by May 6, 2022, as evidenced by an inspection and determination by the Department of Buildings;

THAT the building parameters shall be: a maximum of three (3) stories; a maximum building height of 59’-11”¹; a maximum wall height of 55’-8”¹; a maximum floor area of 36,970 square feet (2.31 FAR); and a minimum of 34 parking spaces, as illustrated on the BSA-approved plans;

THAT the use shall be limited to a house of worship (Use Group 4A), and accessory uses;

THAT DOB will not issue a certificate of occupancy until the applicant has provided it with New York City Department of Environmental Protection’s approval of the Remedial Closure Report;

THAT acceptable interior air quality levels shall be maintained in accordance with the alternates means of ventilation design measures noted on the BSA-approved plans;

THAT no commercial catering or retail shall occur on the site;

THAT any change in the control or ownership of the building shall require the prior approval of the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this

MINUTES

approval and calendar number (“BSA Cal. No. 303-12-BZ”) shall be obtained within four (4) years, by June 4, 2023;

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 May 6, 2022;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 4, 2019.

277-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation, owner.

SUBJECT – Application June 18, 2018 – Amendment of a previously approved Variance (§72-21) to permit a proposed development of a 12-story, 125-unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). The Amendment seeks an additional twenty (20) affordable dwelling units and an additional partial floor for tenant storage: Extension of Time to Complete Construction which expires on August 19, 2018. R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, Block 2170, Lot(s) 180, 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 14, 2018, acting on New Building Application No. 121204222, reads in pertinent part:

“ZR 23-24 Proposed Building exceeds permitted number of dwelling units”

“ZR 23-633d Proposed Building base height does not comply with required minimum and maximums”

“ZR 23-633d Proposed Building Height does not comply with required maximums”; and

WHEREAS, this is an application for an extension of time to complete construction and an amendment to a

variance, previously granted by the Board, to allow 20 additional dwelling units in the subject affordable-housing development; and

WHEREAS, a public hearing was held on this application on April 9, 2019, after due notice by publication in *The City Record*, with continued hearings on Jun 4, 2019, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Manhattan, recommends disapproval of this application, citing concerns with the population that would live in the affordable-housing development, the elimination of parking pursuant to recent zoning amendments, the size of the daycare facility, accessibility for people with disabilities and the reduction in the number of three-bedroom and four-bedroom apartments; and

WHEREAS, the subject site is located on the west side of Fort George Hill, approximately 155 feet south of the intersection of Nagle Avenue and Fort George Hill, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 456 feet of frontage along Fort George Hill, between 46 feet and 27 feet of depth, 21,382 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 19, 2014, when, under the subject calendar number, the Board granted a variance to permit the development of a 12-story mixed-used residential and community-facility affordable-housing building that would not comply with zoning regulations for floor area, lot coverage, rear yards and height and setback on condition that the following be the bulk parameters of the proposed building: a maximum of 12 stories, a maximum floor area of 142,195 square feet (6.97 FAR), a maximum residential floor area of 131,848 square feet (6.46 FAR), a maximum of 73 percent lot coverage, 113 dwelling units, a minimum of 57 parking spaces, a minimum rear yard depth of 10’-0”, and a maximum building height of 146’-1” with no setback, as reflected on the Board-approved drawings; and that substantial construction be completed in accordance with ZR § 72-23; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension of time to complete construction and an amendment to increase the number of dwelling units from 113 dwelling units to 133 dwelling units; and

WHEREAS, the applicant submits that construction delays have occurred as a result of significant management changes and the buyout of an initial development partner and that no permits have been obtained or work done; and

WHEREAS, the applicant submitted a detailed construction schedule indicating that approximately twenty-four (24) months are necessary to complete construction after funding is obtained; and

WHEREAS, the applicant submitted evidence that the proposed amendment is necessary to obtain financing for the subject affordable-housing development and reflect recent

MINUTES

changes in the New York City Department of Housing Preservation and Development design guidelines and new requirements for supportive housing; and

WHEREAS, in particular, the applicant notes that because of the lower-income tiers and the required number of supporting-housing units, which customarily require studios and one-bedroom apartments, additional dwelling units are necessary to accommodate a change in the required unit mix (increasing studio apartments from 0 to 20, increasing one-bedroom apartments from 50 to 61, maintaining 41 two-bedroom apartments and reducing three-bedroom apartments from 22 to 11); and

WHEREAS, the applicant accordingly proposes 20 additional dwelling units, for a total of 133 dwelling units; and

WHEREAS, the applicant also notes that the proposed development, as amended, would stay within the bulk envelope of the approved variance and would, in fact, decrease the building footprint approximately 17'-0" by increasing the side yard to the north from 8'-0" to 25'-7" and decrease the building height from 146'-1" to 143'-0" while increasing the number of floors from 12 to 13 in order to provide storage units for residents; and

WHEREAS, the applicant submitted evidence that the proposed building continues to reflect the minimum variance necessary to afford relief because development costs have increased substantially since 2014 (including steel reinforcement, concrete and labor) while the affordable-housing program has changed to provide deeper affordability levels in such a way that the original unit count would not be viable; and

WHEREAS, in response to community concerns, the applicant provided an operational plan for the proposed daycare facility, indicating that the proposed daycare facility would be operated by the house of worship in the subject building but would also be available to residents of the proposed development and area residents, depending on availability, and the applicant notes that the removal of parking as a result of recent zoning amendments allows for a redesign of the lobby and enlargement of the proposed house of worship along with the inclusion of the proposed daycare facility on the second floor; and

WHEREAS, the applicant further represents that the proposed development will comply with all applicable accessibility regulations, including those provided in the New York City Construction Codes; and

WHEREAS, in response to questions from the Board at hearing, the applicant notes that the proposed development will not use Exterior Insulation and Finish System; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the requested extension of time to complete construction and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution,

dated August 19, 2014, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction of thirty (30) months, expiring December 4, 2021, and an amendment to allow 20 additional dwelling units in the subject affordable-housing development; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 10, 2019"-Thirty-three (33) sheets; and *on further condition*:

THAT no Exterior Insulation and Finish System (EIFS) shall be used for the building;

THAT the following shall be the bulk parameters of the building: a maximum of 13 stories (including mezzanine), a maximum floor area of 139,555 square feet (6.53 FAR), a maximum residential floor area of 127,422 square feet (5.96 FAR), a maximum of 68 percent lot coverage, 133 dwelling units, a minimum of one parking space, a minimum rear yard depth of 10'-0", and a maximum building height of 143'-0" with no setback, as reflected on the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 277-13-BZ"), shall be obtained within thirty (30) months, by December 4, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved drawings shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 4, 2019.

156-73-BZ

APPLICANT – The Design Alliance/Gary Maranga, for Albert Einstein College of Medicine, owner.

SUBJECT – Application June 28, 2018 – Extension of Term of a previously approved variance made pursuant to Section 60(3) of the Multiple Dwelling Law, permitting the use of Transient parking for the unused and surplus tenants' space in the required accessory garage of a multiple dwelling which expires on June 26, 2013. R6 and R4 zoning districts. PREMISES AFFECTED – 1975 Eastchester Road, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for adjourned hearing.

MINUTES

132-92-BZ

APPLICANT – Willy C. Yuin, R.A., for Daniel Cassella, owner.

SUBJECT – Application October 2, 2017 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted day care use in the cellar of the subject premises in conjunction with a banquet hall use, which expired on February 9, 2017; Waiver of the Rules. R3X, CI-1 SRD zoning district.

PREMISES AFFECTED – 3948 Amboy Road, Block 5142, Lot 22, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for adjourned hearing.

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.

SUBJECT – Application January 8, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home which expires on January 30, 2019. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4
Negative:.....0
Absent: Commissioner Sheta1

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2018-166-A

APPLICANT – Queens Neighborhoods United/c/o Tania Mattos, for AA 304 GC LLC, owner.

SUBJECT – Application October 18, 2018 – Interpretative Appeal challenging the Department of Buildings permit issued for the development of a mixed-use building. Appeal of DOB permit that classifies the retail space occupied by Target as a UG 6 use.

PREMISES AFFECTED – 40-31 82nd Street aka 40-19 82nd Street, Block 1493, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Commissioner Sheta1
Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4
THE RESOLUTION –

WHEREAS, this is an appeal challenging Permit Number 421485805-01-NB (the “NB Permit”), issued by the Department of Buildings (“DOB”) on September 20, 2018, for a two-story plus cellar and sub-cellar building at the subject premises, anticipated to be leased, in part, by a Use Group 6 retail store operated as Target; and

WHEREAS, a public hearing was held on this application on March 7, 2019, after due notice in *The City Record*, with a continued hearing on May 21, 2019, and then to decision on June 4, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown conducted inspections of the subject site and the surrounding area; and

WHEREAS, the subject site is bounded by 82nd Street to the west, Ithaca Street to the south and Baxter Avenue to the east, in an R6 (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 167 feet of frontage along 82nd Street, 53 feet of frontage along Ithaca Street, 267 feet of frontage along Baxter Avenue and 23,439 square feet of lot area; and

WHEREAS, this appeal was filed on behalf of Queens Neighborhoods United, an unincorporated association of Queens residents and business owners (“Appellant”); and

PROCEDURAL HISTORY

WHEREAS, New Building Application Number 421485805 (the “NB Application”) was filed at DOB on May 24, 2017, on behalf of the property owner of the subject premises to construct a two-story plus cellar and sub-cellar building at the premises (the “Proposed Building”); and

WHEREAS, the Zoning Diagram (ZD1) filed in conjunction with the NB Application, dated September 13, 2017, summarizes that the Proposed Building would be occupied by Use Group 6 uses on all of the levels of the Proposed Building, including 23,138 square feet of “Building Code Gross Floor Area” and 20,132 square feet of “Zoning Floor Area” on the ground floor and 23,392 square feet of “Building Code Gross Floor Area” and 0 square feet of “Zoning Floor Area” in the cellar; and

WHEREAS, DOB issued the NB Permit on June 15, 2018; and

WHEREAS, on or around August 8, 2018, Appellant submitted a Zoning Challenge and Appeal (“ZRD2”), alleging, *inter alia*, that the NB Permit should be revoked because a 15-year lease recorded at the Office of the City Register indicating that “approximately 23,580 square feet of space in the aggregate” would be leased to the Target Corporation suggested that the Proposed Building would be occupied by a Use Group 10 department store that is not permitted at the subject premises as-of-right, not a Use Group 6 use; and

WHEREAS, DOB accepted the ZRD2 on August 29, 2018, and by letter dated August 30, 2018, notified the property owner and the filing representative of DOB’s intent to revoke the NB Permit for reasons set forth in an accompanying Notice of Objections unless sufficient information was provided to DOB within 15 days and

MINUTES

ordered that all work at the premises stop immediately (the “Intent to Revoke Letter”); and

WHEREAS, objection number 1 of the Notice of Objections reads as follows:

1. The subject new development located within R6 overlay C1-3 Local Retail District area, the building contained as declared by applicant as retail use group 6 located at cellar and first floor (Schedule A submitted), as per submitted Zoning Analysis, and Approved Plans (under Objections Self Certified), or the first floor commercial retail calculated without counting cellar commercial retail area, of the pure Zoning Floor Area of the first floor even after taken all area deduction, it is already up to 18,706 sf. which is way over the maximum permitted in the C1-3 District of allowed 10,000 square feet, and by which of such first floor commercial retail under the use group 6 is contrary to Section 32-15 ZR, file amendment and revised plans to correct the space area; and

WHEREAS, on September 6, 2018, the property owner submitted revised plans and a revised Zoning Diagram indicating that all of the retail establishments in the Proposed Building would contain less than 10,000 square feet of commercial gross floor space and averring that “Retail Establishment A,” understood from publicly available information to be leased by the Target Corporate for operation as a Target store, would occupy 23,392 commercial gross square feet and 0 square feet of “Zoning Floor Area” in the cellar of the Proposed Building and 745 square feet of floor area on the first floor (together, the “Commercial Space”); and

WHEREAS, having accepted the property owner’s response to the Intent to Revoke Letter, DOB issued a Stop Work Rescind Order on September 10, 2018 and the NB Permit was re-issued on September 20, 2018; and

WHEREAS, the subject appeal was filed on or around October 18, 2018; and

WHEREAS, Appellant, DOB and the Target Corporation were all represented by counsel in this appeal; and

APPELLANT’S POSITION

WHEREAS, Appellant asserts that the NB Permit was unlawfully issued because it permits construction of the Proposed Building contrary to ZR §§ 31-00, 31-11 and 32-15; and

WHEREAS, those provisions read, in pertinent part, as follows:

§31-00 GENERAL PURPOSES OF COMMERCIAL DISTRICTS

The Commercial Districts established in this Resolution are designed to promote and protect public health, safety and general welfare. These general goals include, among others, the

following specific purposes:

- (a) to provide sufficient space, in appropriate locations in proximity to residential areas, for local retail development catering to the regular shopping needs of the occupants of nearby residences, with due allowance for the need for a choice of sites;
- (b) [. . .]
- (c) [. . .]
- (d) to protect both local retail development and nearby residences against congestion, particularly in areas where the established pattern is predominantly residential but includes local retail uses on the lower floors, by regulating the intensity of local retail development, by restricting those types of establishments which generate heavy traffic, and by providing for off-street parking and loading facilities;
[. . .]

* * *

§31-11 C1 Local Retail Districts

These districts are designed to provide for local shopping and include a wide range of retail stores and personal service establishments which cater to frequently recurring needs. Since these establishments are required in convenient locations near all residential areas, and since they are relatively unobjectionable to nearby residences, these districts are widely mapped.

The district regulations are designed to promote convenient shopping and the stability of retail development by encouraging continuous retail frontage and by prohibiting local service and manufacturing establishments which tend to break such continuity;

* * *

§32-15 Use Group 6

C1 C2 C4 C5 C6 C8

Use Group 6 consists primarily of retail stores and personal service establishments which:

- (1) provide for a wide variety of local consumer needs; and
- (2) have a small service area and are, therefore, distributed widely throughout the City.

Public service establishments serving small areas are also included. Retail and service establishments are listed in two subgroups, both of which are permitted in all C1 Districts.

The *uses*1 listed in subgroup A are also permitted within a *large-scale residential development* to provide daily convenience shopping for its residents.

A. Convenience Retail or Service

1 Words in italics are as defined in ZR § 12-10.

MINUTES

Establishments Bakeries, provided that *floor area* used for production shall be limited to 750 square feet per establishment [PRC-B]
[. . .]

Dry cleaning or clothes pressing establishments or receiving stations dealing directly with ultimate consumers, limited to 2,000 square feet of *floor area* per establishment, and provided that only solvents with a flash point of not less than 138.2 degrees Fahrenheit shall be used, and total aggregate dry load capacity of machines shall not exceed 60 pounds [PRC-B]
[. . .]

Variety stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B]

B. Offices

[. . .]

C. Retail or Service Establishments

[. . .]

Carpet, rug, linoleum or other floor covering stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B1]

Cigar or tobacco stores [PRC-B]

Clothing or clothing accessory stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B]

Clothing rental establishments, limited to 10,000 square feet of *floor area* per establishment [PRC-B]
[. . .]

Dry goods or fabric stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B]
[. . .]

Furniture stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B1]
[. . .]

Interior decorating establishments, provided that *floor area* used for processing, servicing or repairs shall be limited to 750 square feet per establishment [PRC-B]
[. . .]

Television, radio, phonograph or household appliance stores, limited to 10,000 square feet of *floor area* per establishment [PRC-B]
[. . .]

D. Public Service Establishments
[. . .]; and

WHEREAS, specifically, Appellant argues that the NB Permit is contrary to ZR § 31-00(d) because, Appellant alleges, Target stores generate heavy traffic and the locating of such store at the premises will frustrate existing traffic congestion in the surrounding area; contrary to ZR § 31-11 in that Target stores are regional, rather than local, shopping destinations and not suitable in C1 zoning districts; and

contrary to ZR § 32-15 because, if Target is appropriately characterized as a Use Group 6 variety store, the Commercial Space contains more than 10,000 square feet of “*floor area*”; and

WHEREAS, Appellant asserts that Target is more suitably characterized as a Use Group 10 retailer, specifically, a department store, which is not a permitted use in a C1 zoning district, and that such interpretation is supported by ZR § 32-19, which states:

§32-19 Use Group 10

C4 C5 C6 C8

Use Group 10 consists primarily of large retail establishments (such as department stores) that:

- (1) serve a wide area, ranging from a community to the whole metropolitan area, and are, therefore, appropriate in secondary, major or central shopping areas; and
- (2) are not appropriate in local shopping or local service areas because of the generation of considerable pedestrian, automobile or truck traffic.

A. Retail or Service Establishments

Carpet, rug, linoleum or other floor covering stores, with no limitation on *floor area* per establishment

Clothing or clothing accessory stores, with no limitation on *floor area* per establishment
Department stores

[. . .]

Television, radio, phonograph or household appliance stores, with no limitation on *floor area* per establishment

Variety stores, with no limitation on *floor area* per establishment

B. Wholesale Establishments

[. . .]; and

WHEREAS, Appellant particularly notes that ZR § 32-19 describes uses within Use Group 10 as large retail establishments that “are not appropriate in local shopping or local service areas because of the generation of considerable pedestrian, automobile or truck traffic” and that such description accurately describes Target, a retailer that, Appellant alleges, derives its clientele from a large geographical area; thus, the characterization of a Target store as a Use Group 6 variety store as-of-right at the subject site is inappropriate because the store will invite considerable pedestrian, automobile and truck traffic to an area that is already heavily congested; and

WHEREAS, Appellant concedes that some uses may be characterized as either Use Group 6 or Use Group 10, but notes that when listed in Use Group 10, uses such as variety stores, carpet, rug, linoleum or other floor covering stores and clothing or clothing accessory stores are permitted without a floor area limitation because larger stores serve the purpose of C4 zoning districts, “General Commercial Districts” that “provide for occasional family shopping needs . . . over a wide area” pursuant to ZR § 31-14, and C5

MINUTES

zoning districts, “Restricted Central Commercial Districts” that “serve the entire metropolitan region” pursuant to ZR § 31-15; and

WHEREAS, Appellant avers that the characterization of the a Target store as Use Group 10 is also supported by the legislative history of the 1961 Zoning Resolution, to wit, two studies commissioned by the City of New York prior to that resolution’s adoption: (1) “The Plan for Rezoning the City of New York” by Harrison Ballard & Allen (1950) (the “1950 Study”), which distinguished “Residence Retail Districts,” intended “to protect both residential and retail development against congestion . . . by regulating the intensity of retail development,” from “Commercial Districts,” meant to “provide sufficient space in appropriate locations for transactions of all types of commercial and miscellaneous service activities in beneficial relation to one another”; classified as Use Group 6 uses “needed for more or less daily shopping by persons residing nearby,” which would be permitted in both “Residence Retail Districts” and “Commercial Districts”; and classified as Use Group 9 retail uses “used for occasional shopping by persons residing at a considerable distances, and therefore serve an area ranging from several square miles to the whole metropolitan area,” which would be permitted in “Commercial Districts” and prohibited in “Residence Retail Districts”; and (2) “Zoning New York” by Voorhees Walker Smith & Smith (1958) (the “1958 Study”), which distinguished between C1 and C2 zoning districts designed to serve local needs, C4 zoning districts designed for the primary and secondary outlying shopping centers serving extensive service areas and C5 and C6 zoning districts that cater to the retail and commercial needs of the entire City and metropolitan region; and limited the size of establishments in C1 zoning districts because they are closely related to residential areas and larger establishments generate excessive pedestrian and vehicle traffic originating from outside of the immediate residential neighborhood; and

WHEREAS, Appellant additionally contends that the NB Permit is based on an erroneous application of the definition of “*floor area*,” set forth in ZR § 12-10, to ZR § 32-15, which limits variety stores in Use Group 6 to “10,000 square feet of *floor area* per establishment”; and

WHEREAS, the definition of “*floor area*” provided in ZR § 12-10 states in relevant part:

“Floor area” is the sum of the gross areas of the several floors of a *building* or *buildings*, measured from the exterior faces of exterior walls or from the center lines of walls separating two *buildings*. In particular, *floor area* includes:

[. . .]

(o) any other floor space not specifically excluded.

However, the *floor area* of a *building* shall not include:

(1) *cellar* space, except where such space is used for dwelling purposes. *Cellar* space used for retailing shall be included for the purpose of

calculating requirements for *accessory* off-street parking spaces, *accessory* bicycle parking spaces and *accessory* off-street loading berths [(the “Cellar Space Exclusion”)];

[. . .]; and

WHEREAS, Appellant asserts, therefore, that the portion of the Commercial Space located in the cellar was incorrectly deducted from the “*floor area*” calculation of the Commercial Space pursuant to the Cellar Space Exclusion because the exclusion is based on, and therefore, only applicable to, calculations of the “*floor area* of a *building*”; 2 and

WHEREAS, instead, Appellant argues that the phrase “per establishment,” utilized in ZR § 32-15, is distinct from the phrase “of a *building*,” utilized in the ZR § 12-10 definition of “*floor area*” and must be given meaning, in particular, reference should not be made to Cellar Space Exclusion, which specifically relates to the “*floor area* of a *building*”; and

WHEREAS, accordingly, Appellant asserts that the Commercial Space consists of 23,580 square feet of floor area located on both the ground floor and cellar level, far more than the 10,000 square foot floor area limitation set forth in ZR § 32-15 for variety stores permitted as-of-right in a C1 zoning district; and

WHEREAS, Appellant argue that their suggested interpretation of ZR §§ 12-10 and 32-15 is consistent with those provisions’ respective purposes: the ZR § 12-10 definition of “*floor area*” is meant to aid in calculating the allowable bulk and/or density of a particular building whereas ZR § 32-15, a use, rather than a bulk, restriction, is to be utilized in calculating the allowable size of an establishment, without reference to its location in a particular building; and

WHEREAS, Appellant suggests that, per the explicit language of the ZR § 12-10 definition of “*floor area*”—specifically, the introduction to the Cellar Space Exclusion which begins, “However, the *floor area* of a *building* shall not include . . .”—the Cellar Space Exclusion, as well as the other exclusions that follow, is applicable only when calculating the “*floor area* of a *building*” and because “*floor area*,” in this case, is being calculated “per establishment.”

2 “Building” is defined in ZR § 12-10, in relevant part, as any structure located within the lot lines of a zoning lot, permanently affixed to the land with one or more floors and a roof, bounded by open area or fire walls with at least one primary entrance, provides all the vertical circulation and exit systems required by the New York City Building Code without reliance on other buildings, including required stairs and elevators and contains all the fire protection systems required by the Building Code without reliance on other buildings, including fire suppression or fire alarm systems. Pursuant to ZR § 12-01(e) (‘Rules Applying to Text of Resolution’), “[a] ‘building’ or ‘structure’ includes any part thereof.”

MINUTES

the Cellar Space Exclusion is not applicable; and

WHEREAS, Appellant alleges that the permitting of the Commercial Space as a Use Group 6 use, despite the locating of over 23,000 square feet of the establishment in the cellar, is an absurd result that frustrates the statutory purpose of ZR § 32-11, which reserves C1 zoning districts for local retail, because it permits retail stores of unlimited size in cellars; and

WHEREAS, such an interpretation, the Appellant urges, allows for the locating of a destination retailer in a Local Retail district meant for local shopping, invites additional traffic to an already congested area and, ultimately, displaces existing local retailers; and

DOB'S POSITION

WHEREAS, DOB argues that, pursuant to ZR § 32-15, variety stores with less than 10,000 square feet of “*floor area per establishment*” are permitted as-of-right at the premises; that, pursuant to the ZR § 12-10 definition of “*floor area*,” space in the cellar may be excluded from the calculation of “*floor area*”; thus, the 23,392 square feet located in the cellar of the Proposed Building was properly excluded from the Commercial Space’s “*floor area*” and the NB Permit was lawfully issued; and

WHEREAS, in support of its determination to issue the NB Permit, DOB cites Raritan Development Corp. v. Silva, 91 N.Y.2d 98 (1997), in which the New York Court of Appeals found that the prior text of the ZR § 12-10 “*floor area*” definition—which read in pertinent part, “However, the *floor area* of a *building* shall not include (a) *cellar space*” without qualifications—unambiguously excluded all cellar space, regardless of its use, from “*floor area*” and that DOB erred in interpreting the definition to only allow the exclusion of floor space in the cellar used for non-habitable purposes and insisting that a habitable room in the cellar of a two-family dwelling constituted “*floor area*”; and

WHEREAS, DOB notes that the ZR § 12-10 definition of “*floor area*” was subsequently revised to read as it does today—allowing the exclusion of cellar space, “except where such space is used for dwelling purposes”—but that DOB is unaware of any case law or other authority contradicting the holding in Raritan, that is, that cellar space is to be excluded from calculations of “*floor area*” as defined in ZR § 12-10, unless it is otherwise expressly included; and

WHEREAS, DOB states that Appellant does not dispute that the limitation on Use Group 6 variety stores set forth in ZR § 32-15 uses the defined term, “*floor area*,” meaning, as all uses of defined terms in the Zoning Resolution do, that the term is to be interpreted as it is defined in ZR § 12-10, including the portion that permits cellar space to be excluded from “*floor area*” calculations; and

WHEREAS, DOB acknowledges that the floor area limitation is “per establishment,” but argues that the straightforward and unambiguous meaning of the limitation is that it is to be applied individually to each Use Group 6 business enterprise (establishment) located in a building,

rather than on all Use Group 6 uses in a building; and

WHEREAS, DOB states that the term “*floor area*,” defined in ZR § 12-10 as “the sum of the gross areas of the several floors of a *building* or *buildings*,” includes all of the building’s various components, its floors as well as its establishments, therefore, “*floor area* of a *building*” cannot be calculated differently from the “*floor area per establishment*”; and

WHEREAS, DOB additionally asserts that its determination to issue the NB Permit is consistent with structure of the ZR § 12-10 definition of “*floor area*,” and in particular the Cellar Space Exclusion which, while excluding the cellar space for purposes of calculating “*floor area*,” expressly requires the inclusion cellar space “used for retailing” for purposes of calculating requirements for accessory off-street parking spaces, bicycle parking and off-street loading berths, demonstrating that the legislature is aware, first, that cellar space may be “used for retailing” and, second, that such space, while excluded from “*floor area*” calculations, should nevertheless be included for purposes of calculating the number of parking spaces, et al. an establishment must provide to mitigate its impact on the surrounding community; and

TARGET'S POSITION

WHEREAS, Target confirms that the corporation entered a lease to occupy the Commercial Space in the Proposed Building as a Use Group 6 variety store in compliance with ZR § 32-15 and states that the ZR § 12-10 definition of “*floor area*,” DOB’s consistent application of that definition and binding case law are all clear that cellar space used for retail purposes is not included in the calculation of “*floor area*”; and

WHEREAS, Target avers that the language of the Zoning Resolution is clear and unambiguous and that, because the Target store proposed in the Commercial Space will occupy less than 10,000 square feet of “*floor area*,” the NB Permit was properly issued for a Use Group 6 variety store at the subject premises; and

WHEREAS, Target notes that ZR § 12-10 (DEFINITIONS) starts, “Words in the text or tables or this Resolution which are *italicized* shall be interpreted in accordance with the provisions set forth in this Section,” thus, the use, in italics, of the term “*floor area*” with regards to the 10,000 square foot limitation on Use Group 6 variety stores set forth in ZR § 32-15 evidenced an intention for the term to be interpreted as defined in ZR § 12-10, the Cellar Space Exclusion included; and that DOB has consistently interpreted ZR §§ 32-15 and 12-10 to allow the exclusion of cellar space used for retailing from the “*floor area*” of other Use Group 6 variety stores, most notably, DOB recently approved the Zoning Resolution Determinations filed for two Target stores located within C1 zoning districts (500 East 14th Street, Manhattan, located in a C1-6A zoning district and containing 17,000 square feet of cellar space (DOB Control No. 45352, Approved with Conditions August 9, 2016); and 1201 Third Avenue, Manhattan, located in a C1-9 zoning district and containing 12,477

MINUTES

square feet of cellar space (DOB Control No. 55551, Approved with Conditions October 9, 2018)) and confirmed that cellar space for those stores may be excluded from the calculation of “*floor area*” pursuant to ZR § 12-10; and

WHEREAS, Target acknowledges that the Zoning Resolution calculates space as “*floor area*” in a “building” and describes “establishments” as existing within buildings, but argues that nothing in the zoning text supports Appellant’s assertion that “*floor area per establishment*” should be calculated differently from “*floor area of a building*”; and

WHEREAS, Target states that while “establishment” is not a defined term in the Zoning Resolution, the word is used throughout the text to refer to individual stores, facilities or places of business located within a “building” and, since multiple “establishments” may be located within a single “building,” there is no rationale for calculating “*floor area per establishment*” differently than one would calculate the “*floor area of a building*,” specifically, ignoring the Cellar Space Exclusion and including such space in the calculation of “*floor area per establishment*,” but applying the Cellar Space Exclusion and excluding such space in the calculation of the “*floor area of a building*”; and

WHEREAS, Target argues that Appellant’s claims that the introductory text of ZR §§ 32-15 and 32-19 prohibit the issuance of the NB Permit are not supported by the case law, most notably Coalition for Community Preservation & Stabilization, Inc. v. Board of Standards & Appeals (Sup Ct, Queens County 1985), in which the Supreme Court upheld the Board’s determination that a Home Depot store was properly designated as an as-of-right Use Group 6 hardware store, and Applebaum v. Deutsch, 66 N.Y.2d 975 (1985), in which the Court of Appeals upheld a Board determination that a non-profit institution qualified as a community facility, rejected the Appellate Division dissenters’ position that “introductory statements at the head of the zoning resolution sections listing which uses constitute ‘community facilities’ are to be read as conditions precedent to granting a permit”; observed that “[t]he resolution itself provides that brief statements are inserted at the start of each ‘Use Group’ to describe and clarify the basic characteristics of the various uses listed” and, accordingly, held that such introductory statements are not conditions precedent to the granting of a building permit; and

WHEREAS, Target additionally notes that in certain locations within New York City, the Zoning Resolution explicitly includes cellar space when limiting the overall size of uses and establishments with reference to the defined term “*floor area*”; for example, pursuant to ZR § 111-13(a)(3) (Additional Use Regulations), Use Group 6A and 6C uses in “buildings” located in Subareas A1 and A3 of the Special Tribeca Mixed Use District and fronting on Chambers Street, Church Street, Greenwich Street, Hudson Street or West Broadway “shall be limited to 20,000 square feet of *floor area on a zoning lot*, including retail *cellar space* allotted to such *uses*...” and pursuant to ZR § 137-22 (Community Facility Use), certain ambulatory diagnostic or

treatment health care facilities located within Special Coastal Risk Districts are limited “on any *zoning lot* to 1,500 square feet of *floor area*, including *cellar space*”; and

WHEREAS, accordingly, Target states that the 23,392 square feet located in the cellar of the Proposed Building and intended to be occupied by a Use Group 6 variety store was properly excluded from the “*floor area*” calculation of Retail Establishment A, consistent with ZR § 32-15, which limits the size of Use Group 6 variety stores to “10,000 square feet of *floor area per establishment*,” and ZR § 12-10, which excludes from the calculation of “*floor area*” “*cellar space*, except where such space is used for dwelling purposes”; thus, the NB Permit was properly issued and the subject appeal should be denied by the Board; and

ADDITIONAL TESTIMONY

WHEREAS, the New York City Department of City Planning (“DCP”) submitted a letter, dated March 4, 2019, in support of DOB’s issuance of the NB Permit, stating that the size limitations stated in ZR § 32-15 are as to “*floor area*,” a term defined in ZR § 12-10 to explicitly exclude the area of a cellar, thus the cellar space in a retail establishment utilized for retailing is excluded from the calculation of the establishment’s “*floor area*”; and

WHEREAS, DCP states that the exclusion of cellar space from “*floor area*” and inclusion of cellar spaces for purposes of calculating accessory parking and loading requirements has been a feature of the Zoning Resolution since 1961, is intended to allow retail uses in cellar spaces while also limiting potential adverse parking and loading impacts of larger establishments and allows retail establishments that were typically larger in 1961, and that are limited to “*floor area per establishment*,” to locate on local commercial streets, minimizing dead commercial street frontage while also avoiding the negative visual impact of very large stores; and

WHEREAS, with regards to the characterization of the use as Use Group 6 variety store, DCP states that the Zoning Resolution regularly lists uses in more than one use group, allowing those uses in different zoning districts and implying that the use may be categorized under the Use Group permitted as-of-right in the zoning district in which the use is located—for example, doctor’s offices are included in Use Group 6 as professional offices permitted in commercial and manufacturing districts as well as in Use Group 4 as ambulatory diagnostic or treatment health care facilities, which may be located in residence districts; that the categorization of a use, while subject to DOB review and approval, is at the discretion of the permit applicant; and that retail models have evolved over time to serve the evolving needs of the public and the neighborhoods in which the retailers are located, to wit, DCP reports that there are currently 28 Target stores either planned or open in New York City ranging in size from 150,000 square feet in a shopping center in Staten Island to 18,000 square feet and these stores carry a large variety of merchandise characteristic of variety stores; and that DCP typically defers to DOB as to the categorization of uses, but there is,

MINUTES

admittedly, little to distinguish a department store from a variety store in this instance; and

WHEREAS, DCP offers, as a comparison, “drug stores,” permitted without size limitation as Use Group 6 and which now include larger format stores that carry apparel, housewares, beach and outdoor furniture, hardware, groceries and home furnishings in addition to prescription drugs and suggests that retail models evolve to meet the changing needs of the communities in which they are located; and

WHEREAS, in reply to Target and DOB’s initial submissions, and prior to the initial hearing, Appellant claims that Raritan, cited by DOB, is inapposite to the subject appeal because the question in that case was whether cellar space utilized for dwelling purposes was to be included in the calculation for “*floor area of a building*” (in that case, a two-family residence), but that the question presented in this appeal is with regards to the calculation of “*floor area per establishment*”; that Appelbaum, cited by Target, “simply agreed” that a particular Board interpretation of prefatory language in a Use Group descriptions was “something less than ‘conditions precedent,’” but that, consistent with that decision, the Board “must rely on the introductory statements that describe U[se] G[roup] 6 for ‘guidance in interpreting the resolution,” 66 N.Y.2d at 977, and that both the express language and the intent of the Zoning Resolution are relevant in this appeal; and

WHEREAS, with regards to the Special Tribeca Mixed Use District regulations identified by Target in their submission in opposition to this appeal, Appellant claims that these regulations support Appellant’s argument that “*floor area of a building*” is distinct from “*floor area per establishment*” because the restriction set forth in ZR § 111-13(a)(3), which Appellant calls “a different kind of restriction on use,” is based on the total floor area dedicated to a particular use across a “zoning lot,” which could include several establishments and several buildings and that the provision “correctly clarifies that floor space in the cellar should be included when calculating the floor area of a ‘building’ that is dedicated to a particular use as it would otherwise be excepted from that calculation”; and

WHEREAS, Appellant additionally argues that the North American Industry Classification System (“NAICS”) defines “Variety Store” as:

Establishments primarily engaged in selling a variety of merchandise, such as inexpensive apparel and accessories, costume jewelry, notions and smallwares, candy, toys, and other items in the low and popular price ranges. These establishments generally do not carry a complete line of merchandise, are not departmentalized, do not offer their own charge service, and do not deliver merchandise; and

WHEREAS, Appellant alleges that Target carries a complete line of merchandise that is organized in departments and the corporation has its own charge service,

therefore, it does not qualify as a “variety store” under the NAICS and, as the Zoning Resolution does not provide an alternative definition for “variety store,” Target cannot be classified as a Use Group 6 variety store at all, regardless of how much “*floor area*” it is intended to occupy at the premises; and

WHEREAS, Appellant avers that the question of whether Target is properly classified as a Use Group 6 variety store is similar to the question in the appeal filed and decided under BSA Cal. No. 74-93-A (112-20 Rockaway Boulevard, Queens) in which the Board considered whether DOB’s properly classified a proposed Home Depot as a Use Group 6A hardware store rather than a Use Group 16A or 17A “building materials dealer” and argues that the Board must rely, as it did in that case, on the introductory statements describing Use Group 6 uses to determine whether the development is properly characterized as Use Group 6; and

WHEREAS, in a submission following the initial public hearing, Appellant refers to certificates of occupancy issued to 12 developments throughout the City occupied in part by a Target store that include reference to a Use Group 10 occupancy³ and argues that the characterization of the store intended for the Commercial Space as a Use Group 6 variety store is, thus, incorrect and intended to mislead DOB; notes that the term “*floor area*” appears in the Zoning Resolution without “of a *building*” as a modifier, suggesting that not all “*floor area*” is “*floor area of a building*” and refers to ZR §§ 36-21 (General Provisions of Required Accessory Off-Street Parking Spaces for Commercial or Community Facility Uses), 36-62 (Required Accessory Off-street Loading Berths) and 36-711 (Enclosed bicycle parking spaces) as provisions that use “*floor area*,” not “*floor area of a building*,” as the basis for calculating those requirements; and asserts that the instruction in the ZR § 12-10 definition of “*floor area*” to include cellar space used for retailing for purposes of calculating accessory off-street parking spaces, et al. is “a restatement of how to treat retail floor area in the cellar . . . a summary provided for the convenience of the reader, not a new rule”; and

WHEREAS, in their response to Appellant’s post-hearing memorandum, counsel for Target further states that Target may qualify as either a Use Group 6 variety store or a Use Group 10 department store and such designations are not mutually exclusive as the Zoning Resolution lists several uses in more than one use group, thereby allowing the uses in different zoning districts, and that in zoning districts in

3 Those developments are located at (1) 69-40 Austin Street, Queens; (2) 1715 East 13th Street, Brooklyn; (3) 88-01 Queens Boulevard, Queens; (4) 255 Greenwich Street, Manhattan; (5) 445 Gold Street, Brooklyn; (6) 139 Flatbush Avenue, Brooklyn; (7) 517 East 117th Street, Manhattan; (8) 700 Exterior Street, Bronx; (9) 131-07 40th Road, Queens; (10) 135-05 20th Avenue, Queens; (11) 1865 Broadway, Manhattan; and (12) 1520 Forest Avenue, Staten Island.

MINUTES

which only one use is allowed, a permit applicant has no choice but to choose the use permitted as-of-right—in this instance, such use was Use Group 6 variety store; and

WHEREAS, in response to Appellant’s post-hearing memorandum, DOB states that the characterization of certain Target stores in New York City as a Use Group 10 department store is irrelevant to the use group characterization of the store proposed to occupy the Commercial Space because it is both factually possible and lawful for a use to be classified as more than one use and/or to be listed in different use groups; that the relevant question in this appeal is whether the Commercial Space has more than 10,000 square feet of floor area; that because “variety store” is not defined in the Zoning Resolution DOB looked to the term’s plain meaning, notably, Merriam-Webster’s definition as “a retail store that carries a wide variety of merchandise of low unit value,” and determined, based on DOB’s experience and publicly available information, that Target stores satisfy that definition because they offer food items, cosmetics, hygiene products, toys, office supplies and housewares for sale; that NAICS classifies “general merchandise stores,” under which “variety stores” are listed as an illustrative example, separately from “department stores”; that the wide variety of merchandise offered for sale at Target serves a “wide variety of local consumer needs” and Targets are widely distributed throughout the City, satisfying both general characteristics ascribed to Use Group 6 uses in ZR § 32-15; that even in cases where Target is listed as a Use Group 10 use on certain certificates of occupancy, as in the CO for the Target located on Greenwich Street in Manhattan, and on Austin Street in Queens, it is categorized as a “variety store,” further justifying its characterization as a “variety store” at the subject premises; that the NAICS “variety store” definition cited by Appellants dates from 2008 and does not appear in the most recent NAICS manual, published in 2017, but that, nevertheless, Target stores match that “variety store” definition proffered by Appellant because it is primarily engaged in selling items “in the low and popular price ranges” and, to the extent the stores have departments, offer their own charge service and/or deliver merchandise, these features are not inconsistent with the definition, which states that variety stores “generally” lack such characteristics, thus implying that some variety stores may; that Target is distinguishable from famous department stores like Macy’s, Lord & Taylor, JC Penney and Bloomingdales, which are all generally much larger than the Target proposed for the Commercial Space and dedicate larger proportions of their floor space to clothing sales; that retail drug stores also have “departments” in the manner of labeled aisles, but are generally classified as Use Group 6B drug stores,” hence the presence of “departments” does not automatically render a retail use a Use Group 10 “department store”; that Appellant’s argument that “*floor area* per establishment” should include the cellar space as floor area and “*floor area* of a *building*” should not be non-sensical because all “*floor area*,” defined in ZR § 12-10 as “the sum of the gross areas

of the several floors of a *building* or *buildings*,” is “of a *building*”; that the exception to the general exclusion of cellar space from “*floor area*” for cellar space used for dwelling purposes as well as the explicit inclusion of cellar space used for retailing for purposes of calculating accessory off-street parking requirements, among others, evinces the drafters’ ability and authority to make exceptions to what space should be exempt from calculations of “*floor area*”; that the 10,000 square foot floor area limitation on Use Group 6 variety stores” is with regards to “establishments” because the intent of the limitation was neither to limit the overall commercial space of the building in which the establishment was located, which could be done by a commercial floor area restriction, nor to necessarily limit vehicular traffic, since there are other Use Group 6 uses, such as supermarkets, with unlimited floor area per establishment that generate a higher accessory off-street parking requirement than a variety store⁴ and, therefore, are expected to attract more traffic; and

WHEREAS, counsel for the owner of the premises submitted a letter in opposition to this appeal, dated April 24, 2019, stating that the ZR § 12-10 definition of “*floor area*” is unambiguous in its exclusion of cellar floor space from the “*floor area*” of an establishment for purposes of complying with the 10,000 square foot of floor area limit for Use Group 6 variety stores and providing a list of six Target locations in New York City with certificates of occupancy classifying Target as a Use Group 6 “retail” use⁵; and

WHEREAS, several elected officials submitted letters in support of this appeal citing concerns that the locating of a Target at the premises will adversely impact small businesses in the area that exemplify “local retail” because they are operated by local residents that serve neighborhood needs, encourage gentrification and displacement by raising rents, further crowd the already crowded 7 train and

4 In a C1-3 zoning district, Use Group 6 uses in Parking Requirement Category (“PRC”) B, such as variety store, are required to provide “1 [parking space] per 400 sq. ft. of *floor area*” and food stores in PRC-A are required to provide “1 [parking space] per 300 sq. ft. of *floor area*.” ZR § 36-21.

5 Those stores are located at (1) 50 West 225th Street, Manhattan (CO No. 103171933); (2) 500 East 14th Street, Manhattan (Temporary CO No. 121185519); (3) 815 Hutchinson River Parkway, Bronx (Temporary CO No. 220139516); (4) 145 Clinton Street, Manhattan (Temporary CO No. 121186938); (5) 6401 18th Avenue, Brooklyn (CO No. 3P0008032); and (6) 69-32 Austin Street, Queens (Temporary CO No. 400527505). Both the owner and Appellant identified the Austin Street, Queens, Target location to advance their arguments that Target stores are consistently characterized as Use Group 6 and Use Group 10, respectively. The referenced certificate of occupancy indicates both Use Group 6 “retail stores” and Use Group 10A “variety store” at the basement level and Use Group 10A “variety store” at the first floor.

MINUTES

exacerbate vehicular traffic in the area, in particular, further frustrate the ability of emergency vehicles to reach the Elmhurst Hospital Center located a few blocks away from the subject site; and

WHEREAS, the Board also heard hours of public testimony and received two letters in support and more than 150 additional letters in opposition to this appeal, citing concerns that the locating of a Target store at the subject premises will displace local small businesses, increase crowding on the subway, street traffic and travel times to Elmhurst Hospital and adversely impact the affordability of the area; and

DISCUSSION

WHEREAS, a majority of the Board finds that the ZR § 12-10 definition of “*floor area*” is clear and unambiguous and that the use, in ZR § 32-15, of the defined term “*floor area*” in the “10,000 square feet of *floor area* per establishment” limitation on Use Group 6 variety stores requires the interpretation of that limitation in accordance with the ZR § 12-10 definition of “*floor area*”; that, consistent with the ZR § 12-10 definition of “*floor area*” and the Cellar Space Exclusion, 23,392 square feet of floor space in the cellar of the Proposed Building was properly excluded from the “*floor area*” of the Commercial Space as well as the Proposed Building; that the Commercial Space, a proposed Target store, contains less than 10,000 square feet of “*floor area*”; that the categorization of the Commercial Space as a Use Group 6 variety store is consistent with ZR § 32-15; and that, therefore, the NB Permit was lawfully issued; and

WHEREAS, the Board notes that while the present wording of Cellar Space Exclusion is the result of an amendment to the text in 1999 subsequent to the Court of Appeals’ decision in Raritan, the precise portions of the text in question in this appeal have existed since the adoption of the Zoning Resolution in 1961—that is, the only phrases that distinguish the current Cellar Space Exclusion from the 1961 text are the additions of “except where such space is used for dwelling purposes” and “accessory bicycle parking spaces”⁶; and

WHEREAS, accordingly, a majority of the Board finds Raritan to be instructive in the subject appeal in its insistence that meaning not be imported into clearly written text and that where the statutory language is clear and unambiguous as it is in this case, reference to legislative history need not be made; and

WHEREAS, a majority of the Board agrees that, as

⁶ In 1961, this portion of the text read:

However, the *floor area* of a *building* shall not include:

- (a) *Cellar* space, except that *cellar* space used for retailing shall be included for the purpose of calculating requirements for *accessory* off-street parking spaces and *accessory* off street loading berths;

[. . .]

argued by DOB and DCP, the reference to “*cellar* space used for retailing” in the Cellar Space Exclusion indicates that the drafters of the text were aware that cellar space could be utilized for retail purposes and the express requirement that such space be included for purposes of calculating parking requirements indicates both the drafters’ understanding that such space did not already constitute “*floor area*,” the unit of measure to which parking requirements are applied, see, e.g. ZR § 36-21, and the intention that such space, nevertheless, be included for purposes of providing, among other things, sufficient off-street parking spaces; and

WHEREAS, a majority of the Board is, therefore, unconvinced that “*floor area* of a *building*” and “*floor area* per an establishment” are subject to different methods of calculation in light of the explicit text of the Zoning Resolution as well as the Board’s experience in interpreting that text; and

WHEREAS, the term “*floor area*”—and its definition of excluding cellar space not utilized for dwelling purposes—is consistently used throughout the Zoning Resolution and where the Zoning Resolution seeks to create or recognize an exception to the definition and include cellar space, the text is abundantly clear; and

WHEREAS, for example, ZR § 22-14 limits Use Group 4 ambulatory diagnostic or treatment health care facilities in R3-1, R3A, R3X, R4-1, R4A or R4B zoning districts to “1,500 square feet of *floor area*” and such uses in R3-1, R3A, R3X, R4-1 or R4A zoning district in lower density growth management areas to be limited “to 1,500 square feet of *floor area*, including *cellar* space”; ZR § 42-121 requires certain self-service storage facilities to provide industrial floor space “equal in *floor area* or *cellar* space to 25 percent of the *lot area*”; ZR § 63-01 defines a “FRESH food store” as a Use Group 6 food store containing “at least 6,000 square feet of *floor area*, or *cellar* space utilized for retailing”; and ZR § 111-13 limits certain uses in certain subareas of the Special Tribeca Mixed Use District “to 20,000 square feet of *floor area* . . . including retail *cellar* space allotted”; and

WHEREAS, adopting Appellant’s interpretation that the Use Group 6 variety store limitation of “10,000 square feet of *floor area* per establishment” includes cellar space used for retailing would not only be contrary to the ZR § 12-10 definition of “*floor area*,” particularly the Cellar Space Exclusion—which explicitly differentiates between cellar space “used for dwelling purposes,” which is to be included in “*floor area*,” and cellar space “used for retailing,” which is not mentioned as an exception to the Cellar Space Exclusion and “shall be included” for purposes of calculating required parking spaces and loading berths—but would also render superfluous the use of the phrase “cellar space” in addition to the defined term “*floor area*” in the above-referenced sections of the text; and

WHEREAS, a majority of the Board notes that because the drafters of the Zoning Resolution acknowledge situations, as described above, in which “cellar space”

MINUTES

should be included in total area calculations where the drafters seek to limit the impacts of certain uses on the community, they could easily introduce similar modifications to the text of the Zoning Resolution to respond to changes in retailing, but have so far chosen not to do so except in the case of the Special Tribeca Mixed-Use District; and

WHEREAS, with regards to the proper use group categorization of the Commercial Space, anticipated to be occupied by a Target store, a majority of the Board finds that Target, which sells a variety of goods and merchandise, is properly categorized as a variety store and not a department store, which by virtue of its “*floor area*” being under 10,000 square feet is a Use Group 6 variety store, and not a Use Group 10 variety store, nor a Use Group 10 department store, which typically have larger branded boutiques, sell large home furnishings and appliances, and checkouts in each department; that Target’s categorization as a Use Group 6 at the subject premises is proper because, consistent with the characteristics of Use Group 6 uses set forth in ZR § 32-15, Target stores provide “a wide variety of local consumer needs” and with 28 locations located throughout all five boroughs, they are “distributed widely throughout the City”; additionally, as previously mentioned, the Commercial Space consists of less than 10,000 square feet of “*floor area*” and such use is permitted at the subject site as-of-right; and

WHEREAS, in any event, it became apparent over the course of public hearings that Appellant conceded that the subject Target store could be characterized as either a Use Group 6 variety store or a Use Group 10 department store; and

WHEREAS, the Board acknowledges that excluding cellar space used for retailing from the calculation of “*floor area* per establishment” could, hypothetically, permit stores of virtually unlimited size in a cellar that, because of their size, may be said to lack a “small service area,” and, thus, not meet the general characteristics of Use Group 6 uses as stated in ZR § 32-15, but a majority of the Board finds that the present language of the Zoning Resolution is clear as applied to the Commercial Space and that the proper body to address such potential occupancies, and decide whether or not such use is properly characterized as within Use Group 6, is the legislature through amendments to the relevant portions of the zoning text; and

WHEREAS, with regards to arguments made in support of this application to revoke the NB Permit because the locating of a Target store at the subject premises will increase traffic in the surrounding area, the Board notes that the subject application is for an interpretation of the Zoning Resolution regarding an as-of-right development, not a variance, wherein the Board must find, pursuant to ZR § 72-21(c), that a proposed development requiring variation of applicable zoning regulations “will not alter the essential character of the neighborhood or district . . .; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public

welfare”; and, second, that Use Group 6 variety stores, Use Group 10 variety stores and Use Group 10 department stores are in Parking Requirement Category (“PRC”) B, and, pursuant to ZR § 36-21, each use is required to provide 1 parking space per 400 square feet of “*floor area*,” suggesting that the traffic impacts of such uses were not considered by the drafters of the resolution to have been substantially different, despite Use Group 10 uses only being permitting as-of-right in C4, C5, C6 and C8 zoning districts; and

Therefore, it is Resolved, that the instant appeal, seeking revocation of Permit Number 421485805-01-NB, issued by the Department of Buildings on September 20, 2018, is hereby *denied*.

Adopted by the Board of Standards and Appeals, June 4, 2019.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.

SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

ACTION OF THE BOARD – Laid over to June 11, 2019, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2016-4217-BZ

APPLICANT – Eric Palatnik, P.C., for Bartow Holdings, LLC, owner.

SUBJECT – Application June 13, 2016 – Re-Instatement (§11-411) of a variance which permitted the operation of an Automotive Service Station with accessory uses (UG 16B), which expired on September 29, 2008; Amendment (§11-412) to permit structural alterations to the building; Amendment to permit Automotive Laundry; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 1665 Bartow Avenue, Block 4787, Lot 28, Borough of Bronx.

MINUTES

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Negative:.....0

Absent: Commissioner Sheta1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 11, 2017, acting on Department of Buildings (“DOB”) Application No. 220490911, reads in pertinent part:

ZR 22-00 & ZR 22-10: Proposed gasoline service establishment with amendment to permit automobile laundry (U.G. 16B) in addition to reinstatement of an automobile service station (U.G. 16B) and addition of accessory sales area on the property in a residential zoning district R3A is not permitted and contrary to the stated section of the zoning resolution. Existing BSA Cal # 112-97-BZ expired on September 2008; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reinstatement of a variance, previously granted by the Board, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on January 30, 2018, after due notice by publication in *The City Record*, with continued hearings on March 19, 2019, and June 4, 2019, and then to decision on that date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 12, the Bronx, recommends approval of the application on condition that the Board does not permit the use of a car wash at the site; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application, and 49 form letters in objection to this application, which raised concerns regarding traffic and safety and opposed the addition of a car wash to the site; and

WHEREAS, the subject site is bound by Bartow Avenue to the south, East Gun Hill Road to the west, Tiemann Avenue to the east, in an R3A zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along Bartow Avenue, 88 feet of frontage along East Gun Hill Road, 76 feet of frontage along Tiemann Avenue, 9,213 square feet of lot area and is occupied by a gasoline service station with three (3) pump islands with six (6) multiple product dispensers (“MPD”), off street parking for 12 vehicles and a one- (1) story accessory building service station with washing, lubritorium, office, minor repairs with hand tools only and storage; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 21, 1961, when, under BSA Cal. No. 1055-61-BZ, the Board granted a variance to permit, for a term of 20 years, to expire on November 21, 1981, the erection and maintenance of a gasoline service station, lubritorium, car wash, office, minor repairs with hand tools only and the parking and storage of more than five (5) motor vehicles, on condition that the work be done in accordance with drawings filed with the application; face brick be used on all four (4) walls on the exterior of the accessory building; a 5’-6” high face brick wall be constructed from the accessory building to the Gun Hill Road building line and to the Tiemann Avenue building line along the west lot line and along the entire building line on Tiemann Avenue; one (1) brand sign be located at the corner of Gun Hill Road and Bartow Avenue extending not more than four (4) feet beyond the building line; the accessory building not exceed 66 feet by 30 feet in area, one (1) story high; the sidewalk, curbs and curb cuts be put in a condition satisfactory to the Borough President; all laws, rules and regulations applicable be complied with; and, permits be obtained, work completed and a certificate of occupancy obtained within one (1) year, by November 21, 1962; and

WHEREAS, on February 25, 1964, March 23, 1965, and March 22, 1966, under BSA Cal. No. 1055-61-BZ, the Board amended the resolution to extend the time to complete the work and obtain a certificate of occupancy for periods of one (1) year, the latter of which to expire on by March 22, 1967, on condition that, in view of the statement by the applicant that a permit has been obtained and work is in progress, all work be completed and a certificate of occupancy obtained; and

WHEREAS, on December 18, 1973, under BSA Cal. No. 1055-61-BZ, the Board further amended the resolution to permit alteration to the accessory building as shown on revised drawings of proposed conditions filed with the application, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 8, 1976, under BSA Cal. No. 424-75-BZ, the Board, pursuant to ZR § 11-413, permitted the use at the site to include the sale of used cars, on condition that all work substantially conform to plans filed with the application; the northerly curb cut on Gun Hill Road be eliminated; the existing brick wall be extended along the Gun Hill Road frontage to within ten (10) feet of the southerly curb cut; the hours of operation for the sale of cars be limited to 8:00 a.m. to 10:00 p.m., except Sunday; the sale of cars be for a temporary period coterminous with the automotive service station, to expire November 21, 1981; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by June 8, 1977; and

WHEREAS, on March 22, 1983, under BSA Cal. No. 1055-61-BZ, the Board waived its Rules of Procedure and further amended the resolution, pursuant to ZR § 11-411, adopted on November 21, 1961, as amended through December 18, 1973, for a term of ten (10) years, to expire

MINUTES

on November 21, 1991, on condition that there be no parking of motor vehicles on the sidewalk area; the station be operated at all times in such a fashion so as to minimize traffic congestion; the new certificate of occupancy indicate that the parking and storage of motor vehicles be limited to 12 such vehicles; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by March 22, 1984; and

WHEREAS, on December 15, 1992, under BSA Cal. No. 1055-61-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, further amended the resolution to extend the term and to permit the installation of a metal canopy over four (4) new pump islands with three (3) pumps each and the redesign of the existing accessory building, on condition that the landscaping be installed and adequately maintained; there be no open storage; the parking areas only be for cars awaiting service; the premises be maintained graffiti free; all signs comply with the C1 district regulations; the term be for ten (10) years, to expire on November 21, 2001; the premises be maintained in substantial compliance with proposed conditions drawings filed with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed within one (1) year, by December 15, 1993; and

WHEREAS, on September 29, 1998, under BSA Cal. No. 112-97-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, renewed an expired variance and permitted proposed structural alterations to an existing gasoline service station with automotive repairs and accessory parking, previously granted under BSA Cal. Nos. 1055-61-BZ and 424-75-BZ, including the construction of an additional 395 square feet of storage space, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term be limited to ten (10) years, to expire on September 29, 2008; fencing and screening be provided and maintained in accordance with BSA-approved plans; landscaping be provided and maintained in accordance with BSA-approved plans; all signs comply with C1 district regulations; a dumpster be used for the disposal of dry trash only; there be no open storage of materials on the site; hazardous materials such as batteries and refuse motor oil be kept in proper containers and disposed of in accordance with New York City, New York State and Federal environmental guidelines; all lighting be positioned down and away from nearby residential uses; the premises be maintained clean and free of graffiti; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by September 29, 2002; and

WHEREAS, the prior term having expired, the applicant now seeks a reinstatement of the variance, first

issued in 1961, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*1 was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood; and

WHEREAS, in addition, because this application was filed less than 10 years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(3)(i) to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(3)(i) of the Board's Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant provided affidavits, Fire Department violations, fuel purchase receipts and invoices for deliveries to the site to continuously cover the entire period of March 8, 2009, five (5) months after the expiration of the term of the prior variance, through the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the § 1-07.3(b)(3)(i) of the Board's Rules; and

WHEREAS, the applicant also seeks an amendment to permit the conversion of the accessory automotive service station building to an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed sales area of the accessory convenience store is 1,848 square feet and is less than the lesser of 2,500 square feet or 25

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

percent of the zoning lot (2,303 square feet); and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, which was last enlarged to its current size of 2,013 square feet under BSA Cal. No. 112-97-BZ on September 29, 1998, and, instead, proposes incidental alterations to convert the existing service bays to an accessory convenience store, office and storage room as is permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of public hearings, the Board raised concerns regarding the continuity of the use on the site between the expiration of the term and the filing of the application, and whether the site contained adequate landscaping; and

WHEREAS, in response, the applicant supplemented the evidence of continuous use in satisfaction of the Board and provided plans demonstrating sufficient landscaping, planting beds, curbs and fencing; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules and reinstatement of the variance are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(3)(i) of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, *reinstates* and *amends* a previously-granted variance, issued November 21, 1961, under BSA Cal. No. 1055-61-BZ, as amended through September 29, 1998, under BSA Cal. No. 112-97-BZ, to permit, on a site located within an R3A zoning district, the operation of a gasoline service station and lawful uses accessory thereto, and the conversion of the existing one- (1) story accessory service building into an accessory convenience store, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 4, 2019-Twelve (12) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on June 4, 2029;

THAT there shall be no car wash at the subject location at any time;

THAT fencing and landscaping shall be installed, as per BSA-approved plans, and shall be repaired or replaced as necessary to maintain a first-class condition;

THAT asphalt and low walls of the site shall be repaired as necessary to maintain them in a first-class condition;

THAT no vacuums shall be installed or maintained in the portions of the site adjacent to residential properties;

THAT all lighting shall be positioned down and away from nearby residential uses;

THAT all signs shall comply with C1 district regulations;

THAT a dumpster shall be used for the disposal of dry trash only;

THAT there shall be no open storage of materials on the site;

THAT hazardous materials, such as batteries and

refuse motor oil, shall be kept in proper containers and disposed of in accordance with New York City, New York State and Federal environmental guidelines;

THAT the premises shall be maintained clean and free of graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 112-97-BZ, not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2016-4217-BZ") shall be obtained within four (4) years, by June 4, 2023;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 4, 2019.

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

MINUTES

2016-4153-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Zichron Yehuda, owner.

SUBJECT – Application March 30, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Project Witness*) contrary to floor area ratio and lot coverage (§24-34), front yard (§24-34) and side yard (§24-35(a)). R5 zoning district.

PREMISES AFFECTED – 4701 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4
Negative:.....0

Absent: Commissioner Sheta1

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for decision, hearing closed.

2017-244-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M. for continued hearing.

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing

contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M. for continued hearing.

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M. for continued hearing.

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for continued hearing.

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.

SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.

PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING

TUESDAY AFTERNOON, JUNE 4, 2019

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner and Commissioner Scibetta.

Absent: Commissioner Sheta.

ZONING CALENDAR

2018-191-BZ

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21.

M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for postponed hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on December 5, 2017, under Calendar No. 2017-302-BZ and printed in Volume 102, Bulletin Nos. 49-50, is hereby corrected to read as follows:

2017-302-BZ

CEQR #18-BSA-062Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Kenneth Rudden, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 174A & 176A Beach 111th Street, Rockaway Park, westerly of intersection of Beach 111th Street and Ocean Promenade, Block 16183, Lot 62, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; and

WHEREAS, a public hearing was held on this application on December 5, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject

application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Beach 111 Street, between Rockaway Beach Boulevard and Ocean Promenade, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 60 feet of frontage along Beach 111th Street, 100 feet of depth, 6,000 square feet of lot area and was formerly occupied by six single-family detached residences prior to Superstorm Sandy; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of two two-family detached residences with a distance of 11’-10” between the buildings, contrary to minimum required distance between buildings; and

WHEREAS, at the subject site, the requirement for minimum distance between buildings is set forth in ZR § 23-711; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the

MINUTES

character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to develop the two-family residences creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirement for minimum distance between buildings and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA062Q, dated November 20, 2017.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure *and* issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 *to permit*, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received November 20, 2017"-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the subject buildings shall be as follows: a minimum distance of 11'-10" shall be provided between the subject buildings, as illustrated on the Board-approved plans;

THAT each building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT each building shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of each building where the foundation is not closed shall have a floor assembly that provides a two-hour fire resistance rating;

THAT the height from grade plane to the highest

windowsill leading to a habitable space may not exceed 32 feet;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 5, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

***The resolution has been amended to correct part of the 7th WHEREAS which read located on the east side of Stanton Road, ... Now reads: located on the east side of Beach 111 Street, ... Corrected in Bulletin No. 20, Vol. 104, dated May 17, 2019.**

BULLETIN

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June 21, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|----------------------------------|-----|
| DOCKET | 476 |
| CALENDAR of July 16, 2019 | |
| Morning | 477 |
| Afternoon | 478 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, June 11, 2019**

Morning Calendar479

Affecting Calendar Numbers:

| | |
|---------------------------|--|
| N/A | Amending 2 RCNY § 1-01.1 and adopting a new rule, 2 RCNY § 1-03.5, describing the conduct to be observed by BSA Commissioners. |
| 933-28-BZ | 125-24 Metropolitan Avenue, Queens |
| 222-90-BZ | 80-02 Kew Gardens Road, Queens |
| 509-37-BZ | 202-01 Rocky Hill Road aka 202-02 47 th Avenue, Queens |
| 867-55-BZ | 66-15 Borden Avenue, Queens |
| 245-03-BZ | 160-11 Willets Point Boulevard, Queens |
| 157-06-BZ | 28-56 Steinway Street, Queens |
| 271-13-BZ | 129 Norfolk Street, Brooklyn |
| 2017-233-A | 108 Croak Avenue, Staten Island |
| 2018-23-A & 2018-24-A | 29 and 31 Herbert Street, |
| 2017-5-A thru 2017-7-A | 620A, 620B, 620C Sharrotts Road, Staten Island |
| 2017-59-A | 3857 Oceanview Avenue, Brooklyn |
| 2017-202-A | 43 Cunard Avenue, Staten Island |
| 2018-47-A | 45 Case Avenue, Staten Island |
| 2017-246-BZ | 61/63 Crosby Street, Manhattan |
| 231-15-BZ | 5278 Post Road, Bronx |
| 2016-4465-BZ | 129 Anderson Street, Staten Island |
| 2017-265-BZ | 318-320 54 th Street aka 5401 3 rd Avenue, Brooklyn |
| 2018-8-BZ | 1820 Cropsey Avenue, Brooklyn |
| 2018-25-BZ | 109 Wortman Avenue, Brooklyn |
| 2018-48-BZ | 5205 Hylan Boulevard, Staten Island |
| 2018-96-BZ | 145 Ludlow Street, Manhattan |
| 2018-140-BZ | 100-03 North Conduit Avenue, Queens |
| 2018-141-BZ | 110-37 68 th Drive, Queens |
| 2018-156-BZ | 80-97 Cypress Avenue, Queens |

Afternoon Calendar490

Affecting Calendar Numbers:

| | |
|--------------|--|
| 2016-1211-BZ | 920 Shore Boulevard, Brooklyn |
| 2017-12-BZ | 750 Grand Street, Brooklyn |
| 2017-51-BZ | 51 Warren Street aka 49 Warren Street, Manhattan |

Corrected Calendar494

Affecting Calendar Numbers:

| | |
|-------------|--|
| 101-92-BZ | 66-98 East Burnside Avenue, Bronx |
| 2018-194-BZ | 2317 Avenue K, aka 1086 East 24 th Street, Brooklyn |

DOCKETS

New Case Filed Up to June 11, 2019

2019-167-BZ

2467 Jerome Avenue, Block 3200, Lot(s) 0020, Borough of **Bronx, Community Board: 7**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Blink Fitness) within an existing four-story commercial building contrary to ZR §32-10. C2-4/R6 zoning district. C2-4(R6) district.

2019-168-A

140 Fulton Street, Block 00079, Lot(s) 26, 27, Borough of **Manhattan, Community Board: 1**. Application to permit the development of a mixed-use building with retail and hotel use on requesting a waiver pursuant to General City Law §35 to allow the building to be constructed in the bed of a mapped street and a waiver of bulk regulation pursuant to ZR §72-01(g). C5-5 Special Lower Manhattan District. C5-5 district.

2019-169-BZ

638 Sharrotts Road, Block 7400, Lot(s) 0050, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Rock'Em Extreme) within an existing mixed commercial and manufacturing building contrary to ZR §42-10. M1-1 Special South Richmond District. M1-1(SRD) district.

2019-170-BZ

385 Broadway, Block 00193, Lot(s) 0047, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (High Court) on the second and third floors of an existing building contrary to ZR §32-10. C6-2A Tribeca East Historic District. C6-2A district.

2019-171-BZ

1610 Eastchester Road, Block 4081, Lot(s) 0004, Borough of **Bronx, Community Board: 10**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R6 and M1-1 zoning districts. R6/C2-2 and M1-1 district.

2019-172-A

10 Maguire Court, Block 6977, Lot(s) 350, Borough of **Staten Island, Community Board: 3**. Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior R3-2 zoning district regulations. R3X zoning district. R3X district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JULY 16, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 16, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming uses with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment proposes to occupy a 1,576 square foot retail store with a new eating and drinking establishment, divide an existing residential dwelling into two dwelling units and allow 35 accessory attended parking spaces in the rear; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

188-96-BZ

APPLICANT – Eric Palatnik, P.C., for William McCombs, owner.

SUBJECT – Application November 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on January 6, 2018; Amendment (§11-412) to permit the enlargement of the accessory building, provide new pump islands and install a canopy; Waiver of the Board's Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corp., owner; Quick Stop Auto Repair Inc., lessee.

SUBJECT – Application March 9, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of an automotive repair facility and auto sales (Use Group 16B) which expired on November 29, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on July 20, 2010; Waiver of the Board's Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, Block 9792, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

2018-151-A

APPLICANT – Eric Palatnik, P.C., for College Realty Corp., owner.

SUBJECT – Application September 18, 2018 – Application to permit the development of a three story, 24-unit residential building on a lot that is located partially in the bed of a mapped but unbuilt portion of a street contrary to General City Law §35. R3-2 and R3-1 zoning districts.

PREMISES AFFECTED – 6-05 129th Street, Block 3959, Lot 13, Borough of Queens.

COMMUNITY BOARD #7Q

2019-1-A thru 2019-5-A

APPLICANT – Joseph Loccisano of Sanna & Loccisano Architects, P.C., for Nello Development Corporation, owners.

SUBJECT – Application January 4, 2019 – Proposed construction of five (5) two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 7, 11, 15, 19, 23 Nello Court, Block 7826, Lot Tent. 215, 216, 217, 218, 220, Borough Staten Island.

COMMUNITY BOARD #5SI

CALENDAR

**REGULAR MEETING
JULY 16, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 16, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Petros Realty, owner.

SUBJECT – Application May 9, 2018 – Special Permit (§73-621) to permit the legalization of a one-story horizontal enlargement at the rear of an existing three-story and cellar mixed-use commercial and residential building. C1-3/R6B (Special Bay Ridge District).

PREMISES AFFECTED – 7406 Fifth Avenue, Block 5930, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2018-150-BZ

APPLICANT – Law Office of Lyra J. Altman, for Isaac Mizrahi, owner.

SUBJECT – Application September 18, 2018 – Variance (§72-21) to permit the enlargement of an existing one family home contrary to ZR §23-14 (FAR); ZR §23-143 (Lot Coverage); ZR §23-161(b) (Side Yard); ZR §23-461(c) (less than required open area between buildings); and ZR §23-47 (Rear Yard). R4 zoning district.

PREMISES AFFECTED – 2215 Homecrest Avenue, Block 7373, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-167-BZ

APPLICANT – Sheldon Lobel, P.C., for Steven Oppenheimer, owner.

SUBJECT – Application October 19, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district.

PREMISES AFFECTED – 1133 East 22nd Street, Block 7604, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2019-36-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 12w21 Land, I.P., owner; Precision Run Flatiron, Inc., lessee.

SUBJECT – Application February 19, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Precisions Run*) to be located on the first floor of an existing commercial building contrary to ZR §32-10. C6-4A Ladies' Mile Historic District.

PREMISES AFFECTED – 12 West 21st Street, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 11, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

N/A

Board of Standards & Appeals

Proposed Rule-Making Under the City Administrative Procedures Act (CAPA) – Draft Rules

Amending 2 RCNY § 1-01.1 and adopting a new rule, 2 RCNY § 1-03.5, describing the conduct to be observed by BSA Commissioners.

ACTION OF THE BOARD – Adopted.

THE VOTE TO ADOPT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

Adopted by the Board of Standards and Appeals, June 11, 2019.

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED –125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, a decision of the Department of Buildings (“DOB”), dated September 23, 2015, acting on DOB Application No. 420203595, reads in pertinent part:

1. [. . .];
2. [. . .];
3. [. . .];

4. Term of variance grant under BSA Cal. No. 933-28-BZ expired on October 29, 2014. Refer to the Board of Standards [and Appeals] as per Section 11-411 of the Zoning Resolution; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, extension of the term, pursuant to ZR § 11-411, of a previously granted variance that granted the use of the site as gasoline service station, which expired on October 29, 2014, and an amendment to legalize the construction of a fence enclosure for the existing five (5) off-street parking spaces and permit the addition five (5) additional off-street parking spaces; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with continued hearings on December 11, 2018, and June 11, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the subject site is bound by Metropolitan Avenue to the northeast, 85th Avenue to the north, 126th Street to the east, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 54 feet of frontage along Metropolitan Avenue, 54 feet of frontage along 85th Avenue, 91 feet of frontage along 126th Street, 10,848 square feet of lot area and is occupied by an existing gasoline service station and one- (1) story building with accessory repairs and convenience store, and five (5) off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 25, 1949, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station, including a building for use as an office, lubritorium, auto laundry, motor vehicle repair shop, storage of auto accessories and boiler room, for a term of 15 years as to minor repairs, on condition that the premises be arranged substantially as proposed and indicated on plans filed with the application; the proposed accessory building be arranged and located substantially as indicated and comply in all respects with the Building Code; the boiler room be separated from the balance of the building by fireproof construction, except that the ceiling may be fire-retarded and be enterable only from the exterior; there be erected on the interior lot lines, a masonry wall not less than six (6) feet in height and properly coped; such wall may, however, be reduced to a height of four (4) feet at the building line, ramping down from the six- (6) foot wall height ten (10) feet back from the building line; such wall be of face brick on both sides, matching the brick used in the accessory building; planting areas as indicated be maintained, protected with concrete curbing not less than six (6) inches in height an six (6) inches in width above grade; the plot be

MINUTES

leveled substantially to the grade of Metropolitan Avenue and where not occupied by accessory building, pumps, planting and walls, be paved with concrete, tarvia or other reasonably impervious paving; curb cuts be as shown and restricted to two (2) to Metropolitan Avenue, each not over 25 feet in width, one (1) to 85th Avenue, not over 15 feet in width and one to 126th Street not over 20 feet in width, no part of any curb cut to be nearer than five (5) feet to the side lot lines as prolonged; the curbing may be at the present building line of Metropolitan Avenue and after any widening be replaced by the owner to the new location as may be determined; meanwhile, the pumps may be located as proposed and not nearer than ten (10) feet to the new line of Metropolitan Avenue; gasoline storage tanks not exceed five (5) 550-gallon tanks, located substantially where shown; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; minor repairs permitted under Section 7i be restricted to minor repairing by hand tools only, carried on in the accessory building as proposed; the greasing equipment be of the hydraulic type only; signs be restricted to the permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all temporary and all roof signs, but permitting the erection within the building line of one (1) post standard near the intersection of Metropolitan Avenue and 126th Street to support a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not over four (4) feet; there be no windows on either interior lot line of the accessory building; the grant of the variance includes deeding as proposed by the owner to the City of New York of the present gasoline station site covered by Lot 50 in Block 9240, in accordance with indenture as proposed, which will be subject to the approval of the Corporation Counsel and the Board of Estimate; the release of this present gasoline station to the City and for the elimination of the use be made immediately after the proposed gasoline station on Lot 4 is completed and a certificate of occupancy is issued; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto other than as modified on the same day under BSA Cal. No. 198-48-A; and, all permits required be obtained and all work completed within one (1) year, by October 25, 1950; and

WHEREAS, on October 25, 1949, under BSA Cal. No. 198-48-A, the Board granted an appeal to modify the requirements of General City Law § 35 to permit the use of the portion of the premises, as proposed, within the proposed widening of Metropolitan Avenue, on condition that no structures or equipment other than as permitted under resolution adopted on the same day under BSA Cal. No. 933-28-BZ be installed or maintained; when the widening of Metropolitan Avenue and other adjoining streets affected is determined by the City, the premises be arranged by the owner to meet the requirements of the Board's resolution adopted under BSA Cal. No. 933-28-BZ; and

WHEREAS, on January 16, 1951, under the subject

calendar number, the Board amended the April 1949 resolution to extend the time to obtain permits and complete the work, on condition that, in view of the statement by the applicant that plans have been approved by the Department of Housing and Buildings, all permits be obtained and all work completed within one (1) year, by January 16, 1952; and

WHEREAS, on December 18, 1951, under the subject calendar number, the Board further amended the resolution to permit the addition of three (3) 550-gallon tanks, making a total of eight (8) tanks, and an additional island with four (4) approved type gasoline pumps as indicated on revised plans filed with the application, on condition that in all other respects the resolution be complied with; and

WHEREAS, on January 22, 1952, under the subject calendar number, the Board further amended the resolution by adding that instead of five (5) 550-gallon gasoline tanks there may be eight (8) such tanks and there may also be an additional island with four (4) approved-type gasoline pumps located on the premises on the lot side of the street widening line, as indicated on revised plans filed with the application, on condition that all permits required be obtained and all work completed within six (6) months, by July 22, 1952; and

WHEREAS, on June 30, 1964, under the subject calendar number, the Board granted an extension to the term of the variance for ten (10) years, to expire on June 30, 1974, on condition that there be no parking of cars on the sidewalk; the sidewalk and curbs be restored to good condition; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained; and

WHEREAS, on October 29, 1974, under the subject calendar number, the Board granted an extension to the term of the variance for ten (10) years, to expire on October 29, 1984, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on October 22, 1985, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution, pursuant to ZR §§ 11-411 and 11-412, to extend the term for ten (10) years, to October 29, 1994, to permit the relocation of the gasoline pump islands and elimination of two (2) pumps from each gasoline pump island, to legalize the omission of the landscaping and brick wall along 126th Street, and to permit the installation of a new five- (5) foot high woven wire fence along 126th Street, substantially as shown on revised drawings filed with the application, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic the area where the landscaping is to be omitted be paved with suitable material; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 22, 1986; and

WHEREAS, on April 28, 1998, under the subject calendar number, the Board waived its Rules of Practice and

MINUTES

Procedure and granted an extension of term, pursuant to ZR § 11-411, on condition that the term of the variance be limited to ten (10) years, to expire on October 29, 2004; the sidewalks be repaired by December 31, 1998; the dumpster enclosure be constructed in accordance with the BSA-approved plans; the street be installed and adequately maintained in accordance with the BSA-approved plans; the premises be maintained graffiti free and in substantial compliance with the existing and proposed plan filed with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 28, 1999; and

WHEREAS, on October 24, 2006, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution, pursuant to ZR §§ 11-411 and 11-412, to extend the term for ten (10) years, to expire on October 29, 2014, and to legalize a portion of the building to an accessory convenience store, on condition that the use substantially conform to drawings filed with the application; the conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by October 24, 2006; all conditions from prior resolutions not specifically waived by the Board remain in effect, including the provision of two (2) street trees; an additional street tree be planted on 126th Street within six (6) months, by April 24, 2007; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks an extension of the term of the variance, originally granted in October 1949; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the Board notes that, pursuant to publicly available satellite photographs of the subject site, the site has operated continuously as an automotive service station since the expiration of the term in 2014 through the filing of this application; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, the applicant also seeks an amendment to legalize the construction of a fence enclosure for the existing five (5) off-street parking spaces and permit the addition five (5) additional off-street parking spaces; and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory

building, which has existed in its current dimensions and location on the site since the Board's original grant of the variance in 1949, and, instead, proposes to legalize alterations and permit work that is not structural in nature as is permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the installation of a decorative fence on the site in lieu of landscaping, the safety and stability of the brick retaining wall, and the presence of cars parking on the sidewalks and the illegal dead storage of abandoned cars on the site; and

WHEREAS, in response, the applicant provided plans demonstrating a buffer area provided by the existing decorative fencing along 126th Street, in satisfaction of the Board, agreed to a condition that a licensed engineer inspect the retaining wall to ensure its safety and stability, proposed an additional five (5) parking spaces on the site to discourage sidewalk parking, and represented that the operator modified the language of the contract that is provided to service and repair patrons, stating that abandoned vehicles on the site will be disposed of; and

WHEREAS, by letter dated June 27, 2018, the Fire Department states that a review of Fire Department records indicates that the subject automotive service station is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system, and the Fire Department has no objection to the application; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term is appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated October 25, 1949, as amended through on October 24, 2006, so that, as amended, this portion of the resolution reads: "to legalize the addition of fencing around five (5) off-street parking spaces and along 126th Street, to permit the addition of five (5) off-street parking spaces, both substantially as shown on BSA-approved plans, and extend the term of the variance for a term of ten (10) years, expiring October 29, 2024; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "May 20, 2019"-Eight (8) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 29, 2024;

THAT no dead storage or vehicles, abandoned or without license plates, shall be stored at the subject site;

THAT a sign prohibiting the abandonment of vehicles on the site shall be installed inside the accessory building near the office;

THAT a sign prohibiting parking on the sidewalk and stating that cars will be towed at the owner's expense shall be installed on the property line;

THAT a Fire Department two- (2) year functionality test shall be conducted forthright and performed regularly;

THAT a licensed engineer shall inspect the retaining

MINUTES

wall to ensure its safety and stability;

THAT the street shall be adequately maintained in accordance with the BSA-approved plans;

THAT the premises shall be maintained graffiti free;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 933-28-BZ”) shall be obtained within one (1) year, by June 11, 2020; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 11, 2019.

222-90-BZ

APPLICANT – Kennedys CMK LLP by David M. Kupfer, for 80-02 Fee Owner LLC, owner; 24 Hour Fitness Holdings LLC, lessee.

SUBJECT – Application July 5, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (24 Hour Fitness) which expired on August 13, 2016: Amendment to permit reflect a new operator, changes in hours of operation and minor alteration to the layout; Extension of Time to Obtain a Certificate of Occupancy which expired on March 7, 2009; Waiver of the Board’s Rules. C4-4 zoning district.

PREMISES AFFECTED – 80-02 Kew Gardens Road, Block 3348, Lot 37, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for waivers of the Board’s Rules of Practice and Procedure, an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expired on August 13, 2016, an extension of time to obtain a certificate of occupancy, which expired on March 7, 2009, and an amendment to permit a change in operator, hours of operation, and reflect an interior modification to the physical culture establishment; and

WHEREAS, a public hearing was held on this application on June 11, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner

Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Kew Gardens Road, between Union Turnpike and 80th Road, in a C4-4 zoning district, in Queens; and

WHEREAS, the site has approximately 242 feet of frontage along Kew Gardens Road, 269 feet of frontage along Union Turnpike, 280 feet of frontage along 80th Road, 67,200 square feet of lot area, and is occupied by an existing 12-story plus basement, cellar and two (2) sub-cellars commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the basement (378 square feet of floor area), cellar (450 square feet of floor space) and sub-cellar level 1 (24,712 square feet of floor space) of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 13, 1991, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE on portions of the basement, cellar and sub-cellar 1 of the existing 12-story building, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the special permit be limited to a term of five (5) years, to expire on August 13, 1996; there be no change in the ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; there be compliance in accordance with the Conditional Negative Declaration (“CND”) ((1) the applicant apply to the New York City Department of Transportation, Division of Signals and Street Lighting to add one (1) second of green time from the east west phase to the Southbound phase in addition to the one (1) second agreed to in the September 15, 1987, CND at the east bound, southbound and westbound approaches of the intersection of Kew Gardens Road and 83rd Avenue and (2) the applicant, as a condition precedent to approval of any of the proposed actions, enter into an agreement with the New York City Department of Transportation pursuant to which the applicant agrees to pay for implementation of outstanding conditions from the CND issued September 15, 1987; such implementation commence when the occupancy of the building has reached 50 percent); the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70, by August 13, 1994; and

WHEREAS, on April 7, 1992, under the subject calendar number, the Board amended the resolution and accepted revised drawings to reflect a 12,659 square foot reduction in the total space to be used for the PCE—the running track omitted and all PCE functions previously approved relocated and/or reduced in size—the 12,659

MINUTES

square feet to be used for storage, substantially as shown on approved drawings, on condition that substantial construction be completed within one (1) year, by April 7, 1993, and other than as amended the resolution be complied with in all respects; and

WHEREAS, on September 23, 1997; under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire on August 13, 2006, on condition that the premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by September 23, 1998; and

WHEREAS, on October 7, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for a period of ten (10) years, to expire on August 13, 2016, and to extend the time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within six (6) months, by March 7, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit and time to obtain a certificate of occupancy having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit and more than 30 days after the time to obtain a certificate of occupancy, respectively; and

WHEREAS, the applicant represents that the current operator of the PCE, 24 Hour Fitness, has operated at the subject site continuously since expiration of the term and the applicant would face substantial prejudice absent a waiver of the Board's Rules; and

WHEREAS, the applicant also seeks an amendment to reflect a change to the owner and operator of the PCE from "Bally's" to "24 Hour Fitness," to legalize new hours of operation as Monday through Thursday, 6:00 a.m. to 12:00 a.m., Friday, 6:00 a.m. to 11:00 p.m., and, Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and to legalize interior alterations to the existing PCE space; and

WHEREAS, the Department of Investigation has performed a background check on the new corporate owner and operator of the establishment and the principals thereof

and issued a report, which the Board has deemed satisfactory; and

WHEREAS, by letter dated April 5, 2019, the Fire Department states that the Fire Department has no objection to the application as these premises have a fire alarm and sprinkler system that have been inspected and tested satisfactorily; and, the Licensed Public Place of Assembly Unit has been performing annual inspections of the public assembly space and have found it to be in compliance with all rules and regulations of the Department; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term, one (1) year extension of time to obtain a certificate of occupancy and the subject amendment to permit changes to the owner and operator, hours of operation and interior layout, are appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated August 13, 1991, as amended through October 7, 2008, so that, as amended, this portion of the resolution reads: "to permit an extension of term for ten (10) years, to expire on August 13, 2026, extend the time to obtain a certificate of occupancy for one (1) year, to expire June 11, 2020, and permit changes to the hours of operation, interior PCE space and operator of the PCE, to "24 Hour Fitness," *on condition* that the use and operation of the site shall conform to drawings filed with this application marked 'May 16, 2019'-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 13, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT all massages shall be provided by New York State licensed massage therapists;

THAT an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 222-90-

MINUTES

BZ”) shall be obtained within one (1) year, by June 11, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 11, 2019.

509-37-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka 202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for adjourned hearing.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking

establishment (McDonald’s), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

157-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 2856 Astoria LLC, owner; TSI Astoria LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) on the first and second floor of a three-story commercial building which expired on February 27, 2017; Waiver of the Rules. C4-2A and C2-2/R6 zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, Block 662, Block 41, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.

SUBJECT – Application January 8, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home which expires on January 30, 2019. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for decision, hearing closed.

MINUTES

APPEALS CALENDAR

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.
SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.
PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

Adopted by the Board of Standards and Appeals, June 11, 2019.

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.
SUBJECT – February 16, 2018 - Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.
PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decisions of the Deputy Borough Commissioner, dated January 16, 2018, acting on Department of Buildings (“DOB”) Application Nos. 520279626 and 520279635, read in pertinent part:

GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street [or] frontage space contrary to Section 501.3.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of two (2) three- (3) story mixed-use commercial

and residential buildings, each with two (2) residential units, with frontage on Herbert Street, an existing and improved road not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, with continued hearings on March 5, 2019, March 26, 2019, May 7, 2019, and June 4, 2019, and then to decision on June 11, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application, citing concerns regarding the proposed development being inconsistent with neighborhood character and the substandard width of Herbert Street; and

WHEREAS, the subject sites are located on the north side of Herbert Street, east of Seguine Avenue, in an R3X (C1-1) zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site is located approximately 142 feet east of the intersection of Herbert Street and the eastern record line of Seguine Avenue, a mapped street; and

WHEREAS, by communication dated February 26, 2019, the Office of the Staten Island Borough President states that Seguine Avenue is a final mapped street to an irregular width and there is a street setback line across the Seguine Avenue frontage; that Seguine Avenue is mapped, but title is not vested with the City, thus, the Corporation Counsel issued an Opinion of Dedication for the as-in-use width of 40 feet on January 5, 1981, to allow for public municipal street utilities or improvements within the designated public easement; the existing pavement for Herbert Street is substandard; there are opportunities to increase the width of the paved roadway to a 34 foot minimum with a nine- (9) foot wide commercial sidewalk and curb treatment—this will remove the dangerous “neck-down” that currently exists in the field and increase capacity for the throughput; being that the designated access to the off-street parking for the project is located directly in front of the property and through the center of the proposed building, no other curb cuts on adjoining properties should be permitted; and, the new parking lot should not be incorporated into the adjoining existing paved areas on other lots without a cross access easement; and

WHEREAS, the Plot Diagram submitted by the applicant and verified by the Staten Island Borough President’s Topographical Bureau on October 16, 2017, indicate that Herbert Street is unmapped, but was issued a Corporation Counsel Opinion, dated October 6, 1987, as in-use at a width of 40 feet; and

WHEREAS, the applicant states that Herbert Street is paved to a width of between 29.5 feet and 35 feet and that the subject sites will be accessed by a proposed 18-foot wide curb cut; and

WHEREAS, the existing tax lot 1 has approximately 212 feet of frontage along Herbert Street and 103 feet and 103

MINUTES

feet of frontage along Seguine Avenue; and

WHEREAS, the applicant proposes to subdivide tax lot 1 into three (3) tax lots: (1) tentative tax lot 1 with approximately 142 feet of frontage along Herbert Street and 103 feet of frontage along Seguine Avenue, which is not the subject of this application; (2) tentative tax lot 104 (31 Herbert Street) with 31 feet of frontage along Herbert Street and 103 feet of depth; and (3) tentative tax lot 105 (29 Herbert Street) with 39 feet of frontage along Herbert Street and 103 feet of depth; and

WHEREAS, tentative tax lots 104 and 105 are currently vacant; and

WHEREAS, by letter dated October 23, 2018, the New York City Department of Environmental Protection (“DEP”) states that there are eight- (8) inch diameter City water main, ten- (10) inch diameter sanitary and 24-inch diameter storm sewers in Herbert Street at the subject location; the Drainage Plan NO: (R-1)/TD-5 (R-3), Lemon Creek Watershed, Sheet 7 of 11, dated July 2, 2010, shows ten- (10) inch diameter sanitary and 24-inch diameter storm sewer in Herbert Street east of the intersection with Seguine Avenue; the applicant has submitted a copy of the certified Site Connections Proposal (“SCP”) # 8377, which shows a six- (6) inch diameter sanitary connection and a six- (6) inch diameter storm connection; it is anticipated that the water connection to the eight- (8) inch diameter water main, the proposed sanitary and storm connections as per the SCP will be maintained by the owners/members of the Shop Owners Association and will not be maintained by the City of New York; and based on the foregoing, DEP has no objections to the subject application; and

WHEREAS, the applicant submits that the site will comply with all applicable provisions of the Zoning Resolution and special district provisions, including, but not limited to, off-street accessory parking, as well as Lower Density Growth Management Area (“LDGMA”) requirements regarding the locations of Use Group 1 and 2 uses in mixed-use buildings and that the proposed mixed-use buildings will be fully sprinklered; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to increase the paved width of Herbert Street to between 30 to 32 feet directly in front of tentative tax lot 1, located immediately to the east of the subject site, was filed with the New York City Departments of Buildings and Transportation; and

WHEREAS, the applicant additionally states that the proposed mixed-use buildings are consistent with the neighborhood character, which includes residential buildings and a dentist office across from the proposed buildings on Herbert Street; and

WHEREAS, by letter dated April 3, 2019, the Fire Department raised objections to the subject application regarding the access to the subject development concerning the street width and applications filed for adjoining lots formerly known as lots 41, 31 and 34, requested the applicant provide copies of the BPP, show on plans the location of proposed fire hydrants, elevation drawings of the proposed

buildings, and provide the Fire Department connection and show a hydrant within 100 feet of the development, minimum curb to curb distance of 34 feet and full sprinklering of each building; and

WHEREAS, in response, the applicant represented that the applications for adjoining lots are not a part of the subject application, resubmitted the BPP, demonstrated the location of the fire hydrant, provided elevation drawings demonstrating the proposed buildings connected above the first floor, and modified the declaration in satisfaction to the Fire Department’s requirements and recommendations; and

WHEREAS, by letter dated June 2, 2019, the Fire Department stated no objection to the application; and

WHEREAS, with respect to the practical difficulty and unnecessary hardship in developing the sites in strict conformance with the General City Law, the applicant states that, absent a waiver of the requirement that the buildings front on mapped streets, access to the proposed developments could only be achieved over separate lots and, even if such access was possible, the proposed buildings would still front on Herbert Street, which is not a final mapped street and such relief would still be necessary; and

WHEREAS, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

Therefore, it is Resolved, that the decision of the Department of Buildings dated January 16, 2018, acting on Department of Buildings Application Nos. 520279626 and 520279635, 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 drawings filed with the application marked “April 18, 2019”-One (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the proposed mixed-use buildings shall each be fully sprinklered, as indicated on the Board-approved plans;

THAT prior to the issuance of this resolution, a restrictive declaration shall be recorded in the Office of the City Register of Richmond County (recorded June 14, 2019, Land Doc # 742210) against the subject tax lots substantially conforming to the form and substance of the following:

DECLARATION made this ____ day of ____ 2019, by the Masucci Real Estate Trust, hereinafter referred to as the “Declarant,” located at 45 Marble Loop, Staten Island, New York.

WHEREAS, the Declarant is the owner of certain land located in the City and State of New York, Borough of Staten Island, designated as Block 6681 Lot 1 as depicted on the Tax Map of the City of New York on the date of this declaration and described as Exhibit A attached hereto, and hereinafter referred to as the “Subject Property.”

WHEREAS, the Declarant has proposed to subdivide the Subject Property to create tax lots to

MINUTES

be known as Lots 1, 104 and 105, as reflected in the diagram attached hereto as Exhibit B.

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. Nos. 2018-23-A and 2018-24-A for approvals to construct three story buildings on proposed Lots 104 and 105, that do not front on a final mapped street, contrary to Article III, Section 36 of the General City Law (the "BSA Applications").

WHEREAS, Herbert Street the street upon which proposed Lots 104 and 105 front, has a Corporation Counsel Opinion issued October 6, 1987 declaring it to be a record street in public use. WHEREAS, Herbert Street, as of the date of this declaration, is currently being maintained by the City of New York, including street repairs and sanitation service.

WHEREAS, the City of New York has not placed the portion of Herbert Street in front of the Subject Property ("Herbert Street Frontage") on the official map of the City of New York, and as such may, in the future, discontinue its maintenance of the Herbert Frontage.

WHEREAS, the Herbert Frontage, as of the date of this declaration, is paved and improved to an irregular width that is less than 34 feet cub to curb. WHEREAS, the Fire Department of New York in review of the applications filed under Cal. Nos. 2018-23-A and 2018-24-A requested that the Herbert Frontage have a curb to curb street width of 34 feet.

WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the buildings proposed in the BSA Applications; NOW, THEREFORE, in consideration of the BSA granting approval to allow the proposed construction of buildings not fronting on a legally mapped street, contrary to Article III, General City Law 36, Declarant does hereby declare that Declarant and its successors and/or assigns:

1. Shall complete improvement of the Herbert Frontage to the center line of Herbert Street, substantially as depicted on the plan annexed hereto as Exhibit C, subject to final review and approval of the Department of Buildings and/or Department of Transportation of the City of New York, prior to obtaining Certificates of Occupancy for the proposed buildings on Lots 104 and 105, such improvement to include installation of sidewalks and a minimum curb to curb street width of 24 feet;
2. Shall, upon the City of New York's abandonment of a portion or all of the Herbert Frontage as depicted on the plan annexed

hereto as Exhibit D, be responsible for future maintenance of such abandoned portion(s), to the center line of Herbert Street, including street repairs and sanitation services thereon, in front of the Subject Property;

3. This declaration shall become void upon the addition of the Herbert Frontage to the official map of the City of New York;
4. This declaration may not otherwise be modified, amended or terminated without the prior written consent of the BSA;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
6. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
7. This declaration shall be recorded at the office of the Richmond County Clerk against the Subject Lot and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the Subject Lot and in any deed for the conveyance thereof.

THIS DECLARATION IS ONLY EFFECTIVE UPON APPROVAL BY THE BOARD OF STANDARDS AND APPEALS OF THE APPLICATIONS FILED UNDER CAL. NOS. 2018-23-A and 2018-24-A AND UPON SUBSEQUENT COMPLETION OF CONSTRUCTION AND ISSUE OF A CERTIFICATE OF OCCUPANCY PURSUANT TO SUCH APPROVALS, OTHERWISE THIS DECLARATION IS OF NO EFFECT.

THAT the above conditions shall be noted on the certificates of occupancy;

THAT certificates of occupancy, also indicating this approval and calendar numbers ("BSA Cal. No. 2018-23-A & 2018-24-A"), shall be obtained within four (4) years, by June 11, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by DOB;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 11, 2019.

MINUTES

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 620A, 620B, 620C Sharrots Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – Proposed enlargement of a one family home to a one family home with attic and community facility (UG 3) day care not fronting on a legally mapped street, contrary to General City Law 36. R3-1 zoning district.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2017-202-A

APPLICANT – Law Office of Steven Simicich, for Over Development, Ltd., owner.

SUBJECT – Application June 2, 2017 – Proposed construction of a two-family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3S (SHPD) zoning district.

PREMISES AFFECTED – 43 Cunard Avenue, Block 623, Lot 252, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.

SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – Variance (§72-21) to permit commercial retail (UG 6) on the level of the ground floor contrary to ZR §42-14. M1-5B (SoHo Cast Iron Historic District).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

Adopted by the Board of Standards and Appeals, June 11, 2019.

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

MINUTES

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2017-265-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application September 8, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board’s rules. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd Avenue, Block 822, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board’s Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.

SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for adjourned hearing.

2018-48-BZ

APPLICANT – Philip L. Rampulla, for Joseph Marino, owner.

SUBJECT – Application March 30, 2018 – Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 5205 Hylan Boulevard, Block 6499, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for decision, hearing closed.

2018-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

2018-140-BZ

APPLICANT – Eric Palatnik, P.C., for Cohancy Realty LLC, owner.

SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.

PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M. for continued hearing.

MINUTES

2018-141-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Davidov, owner.

SUBJECT – Application August 28, 2018 – Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district.

PREMISES AFFECTED – 110-37 68th Drive, Block 2227, Lot 48, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

2018-156-BZ

APPLICANT – Sheldon Lobel, P.C., for PSCH Cypress Avenue Housing Development Fund Corp. d/b/a WellLife Network Inc., owner.

SUBJECT – Application October 12, 2018 – Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 2 residential building (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing contrary to ZR §§ 23-142 (floor area and FAR), 23-142(g) (open space), 23-22 (density regulations), 23-45(a) (front yard), 23-451 (planting requirements), 23-631(d) (front height and setback), 23-632(b) (side setback) and 25-251 (parking). R5 zoning district.

PREMISES AFFECTED – 80-97 Cypress Avenue, Block(s) 3731/3732, Lot(s) 65,54, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING
TUESDAY AFTERNOON, JUNE 11, 2019
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2016-1211-BZ

APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Application May 16, 2019 – Compliance hearing – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)). R3-1 zoning district.
PREMISES AFFECTED – 920 Shore Boulevard, Block 08746, Lot 107, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Special permit revoked.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application regarding the compliance of construction at the subject site with a special permit for the enlargement of an existing single-family residence, previously granted by the Board, under ZR §§ 73-622 and 73-03, on condition that removal of any existing exterior walls indicated to remain on the Board-approved drawings shall void the special permit; and

WHEREAS, a public hearing was held on this application on June 11, 2019, after due notice to the applicant and the property owners of record by certified mail, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding area; and

WHEREAS, on April 11, 2019, the Department of Buildings issued a full stop work order to the subject site; and

WHEREAS, by letter dated April 17, 2019, the Board notified the applicant that a commissioner had observed what appeared to be the complete demolition of the existing residence proposed to be enlarged, contrary to the Board’s grant; stated that, pursuant to ZR § 73-04, failure to comply with the Board’s conditions and safeguards constitutes a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and requested photographs demonstrating the retention of walls as indicated as “Existing Walls to Remain” on the Board-approved drawings, with the

MINUTES

dimensions of the walls noted on the photographs and the photographs keyed to the plan sheets; and

WHEREAS, by letter dated May 7, 2019, the applicant states, in pertinent part:

We have been informed by the property owner and superseding project architect that during the course of construction, it was discovered that some of the pre-existing walls that were on the approved plans were not situated exactly as depicted; others were not sitting on any foundation; and others although on foundation would not be able to bear any load. All of which have compromised the Board's approval.; and

WHEREAS, the applicant did not submit any photographs; and

WHEREAS, by certified letter dated May 16, 2019, the Board informed the property owners and the applicant of a compliance hearing to be held on June 11, 2019, affording them the opportunity to provide evidence that the conditions of the Board's grant have not been violated, and stating that failure to attend the Board's compliance hearing or to submit a further response or evidence in advance may be deemed an admission that the Board's conditions have been violated and may subject them to revocation of the special permit and other appropriate enforcement action; and

WHEREAS, no evidence was submitted, and no one attended the hearing on behalf of the property owners to demonstrate compliance with the Board's condition; and

WHEREAS, at hearing, the Board discussed the evidence in the record (including photographs and personal inspection by a commissioner and the Board's compliance officer) demonstrating the complete demolition of the existing residence, noted that the applicant has been in substantial violation of the Board's condition, and agreed with the applicant's statement that the special permit had been "compromised."

Therefore, it is Resolved, that the special permit granted by the Board of Standards and Appeals on February 28, 2017, under BSA Calendar Number 2016-1211-BZ, shall be and hereby is *revoked*.

Adopted by the Board of Standards and Appeals, June 11, 2019.

2017-12-BZ

CEQR #17-BSA-066K

APPLICANT – Sheldon Lobel, P.C., for 750 Grand Associates, L.P., owner; for Absolute Power Corp., lessee.
SUBJECT – Application January 13, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Absolute Power*) within the cellar of an existing building, C4-4A zoning district.

PREMISES AFFECTED – 750 Grand Street, Block 2789, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 16, 2016, acting on DOB Application No. 320215183, reads in pertinent part:

A physical culture establishment, as defined by ZR 12-10, is not permitted as of right in a C4-4A zoning district pursuant to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, a physical culture establishment ("PCE") on the cellar level of a four- (4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 11, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Grand Street, between Graham Avenue and Humboldt Street, within a C4-4A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 102 feet of frontage along Grand Street, 100 feet of depth, 10,181 square feet of lot area and is occupied by an existing four- (4) story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 6,988 square feet of floor space in the cellar with areas for exercise equipment and weights, yoga, reception, restrooms, and mechanical spaces; and

WHEREAS, the applicant represents that the PCE began operation in 1999, as “Absolute Power,” and has the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board was in receipt of no testimony in objection to the subject application, and the applicant states that the PCE is located in the cellar, below commercial space on the first floor, and that no sound attenuation measures have been installed; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE has operated at the subject site since 1999 and is consistent with the mixed-use character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE has operated at the subject site for almost 20 years, largely without incident, and anticipates that the benefits provided by the PCE will greatly outweigh any potential disadvantages to the community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system are installed and maintained within the PCE space; and

WHEREAS, by letter dated June 7, 2019, the Fire Department states that the premises is currently protected by a sprinkler system, which tested satisfactorily as per the Department’s Rules and Regulations; an application for the installation of a fire alarm system was filed and the system was tested and approved; and, the Bureau of Fire Prevention will continue to inspect these premises and enforce all orders; and

WHEREAS, at hearing, the Board raised concerns regarding access to the subject PCE and whether PCE patrons shared the same lobby and elevators as residential tenants; and

WHEREAS, in response the applicant represented that the PCE patrons needing assistance share the elevator and lobby with residential tenants, but the elevators stop at residential floors only with keycard access; and

WHEREAS, pursuant to ZR § 73-03, the Board finds

MINUTES

that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17BSA066K, dated July 13, 2017; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the cellar level, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, the operation of a physical culture establishment on the cellar level of an existing four- (4) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “May 23, 2019”-Five (5) sheets; and *on further condition:*

THAT the term of the PCE grant will expire on June 11, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT a sprinkler system and an approved fire alarm system shall be maintained within the PCE space, as per BSA-approved plans;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2017-12-BZ”), shall be obtained within one (1) year, by June 11, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its

jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 11, 2019.

2017-51-BZ

APPLICANT – Jay Goldstein, Esq., for 51 Warren Retail LLC, owner; Dancebody, lessee.

SUBJECT – Application February 21, 2017– Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Dancebody*) located in the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A/C6-3A (Tribeca South Historic District Extension)
PREMISES AFFECTED – 51 Warren Street aka 49 Warren Street, Block 133, Lot 7506, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

Adopted by the Board of Standards and Appeals, June 11, 2019.

Carlo Costanza, Executive Director

MINUTES

***CORRECTION**

This resolution adopted on June 26, 2018, under Calendar No. 101-92-BZ and printed in Volume 103, Bulletin No.27, is hereby corrected to read as follows:

101-92-BZ

APPLICANT – Sheldon Lobel, P.C., for Portrem Realty Company, LLC, owner.

SUBJECT – Application December 2, 2016 – Extension of Term (§11-411) for the continued operation of the use of parking lot for non-commercial, non-transient parking which expired on October 26, 2013; Waiver of the Rules. C1-4/R8 zoning district.

PREMISES AFFECTED – 66-98 East Burnside Avenue, Block 2829, Lot 45, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with continued hearings on May 1, 2018, and then to decision on June 26, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 7, 1957, when, under BSA Calendar Number 754-56-BZ, the Board granted a variance to permit the unbuilt upon portion of the subject site at the rear to be occupied for the parking of employees’ and patrons’ cars, without charge, and for parking by other persons in the neighborhood who desire such parking, at a rate to be established for a term of five (5) years, expiring May 7, 1962, on condition that such portion of the subject site be leveled substantially to the grade of Walton Avenue and the plot surfaced with clean gravel or steam cinders treated with a binder and properly rolled, that the extension of the present building formerly used as an oven be removed, that fences of the woven wire chain link type be erected on all lot lines not less than 5’-6” in height, that entrance be maintained at Walton Avenue only with curb cut opposite not exceeding 15 feet, that at the entrance at the building line there be gates of similar construction and suitable bumpers maintained at all points for protection of the wall and building, that there may be a sign attached to the fence near the entrance which shall not extend over the building line, shall not be illuminated and shall not exceed 15 square feet in area, that such portable fire-fighting

appliances be maintained as the Fire Commissioner directs, that any differences in grade be maintained by means of slopes which shall be properly paved, or by retaining walls and that a certificate of occupancy be obtained within six (6) months, by November 7, 1957; and

WHEREAS, on November 6, 1957, under BSA Calendar Number 754-56-BZ, the Board amended the variance to permit as proposed the unbuilt upon portion of the subject site to be occupied for the parking and storage of motor vehicles of the pleasure car type only as indicated on the Board-approved plans; and

WHEREAS, on January 9, 1962, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring January 9, 1967, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on February 15, 1967, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring February 15, 1972, on condition that a certificate of occupancy be obtained; and

WHEREAS, on May 2, 1972, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring February 15, 1977, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on October 26, 1993, under the subject calendar number, the Board granted a reinstatement of the variance to permit a non-transient parking lot (Use Group 8) for a term of ten (10) years, expiring October 26, 2003, on condition that the site be maintained free of graffiti and debris, that the parking lot be paved in accordance with Building Code § 27-479, that street trees and fencing be provided and maintained in accordance with the Board-approved plans, that all lights be directed downward and away from adjacent residential uses, that if signs are provided for the parking lot, such signs be limited to 15 square feet and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on April 27, 2004, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring October 26, 2013, on condition that the number of parking spaces on the site shall be limited to a maximum of 25, of which 11 spaces shall be made available for rental to neighborhood people as indicated on the previous certificate of occupancy, that the parking layout be approved by the Department of Buildings and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence that the use has been continuous, that lighting levels are low along the perimeter, that plantings have been installed, that the fences are in place and that fewer than 10 percent of the visitors to the site access the commercial retail and eating or drinking establishment by personal vehicle; and

MINUTES

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure and extension of term are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated October 26, 1993, as amended through April 27, 2004, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring October 26, 2023; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 12, 2018"-One (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring October 26, 2023;

THAT landscaping shall be maintained and replaced as necessary to create a dense buffer zone;

THAT fencing shall be maintained;

THAT the number of parking spaces on the site shall be limited to a maximum of 25;

THAT the parking layout shall be as approved by the Department of Buildings;

THAT the site shall be maintained free of graffiti and debris;

THAT the parking lot shall be paved in accordance with Building Code § 27-479;

THAT street trees and fencing shall be provided and maintained in accordance with the Board-approved plans;

THAT all lights shall be directed downward and away from adjacent residential uses;

THAT if signs are provided for the parking lot, such signs shall be limited to 15 square feet;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 26, 2022;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 26, 2018.

Corrected in Bulletin No. 25, Vol. 104, dated June 21, 2019.

***The resolution has been amended to correct part of the conditions which now reads THAT the number of parking spaces on the site shall be limited to a maximum of 25;**

MINUTES

*CORRECTION

This resolution adopted on April 30, 2019, under Calendar No. 2018-194-BZ and printed in Volume 104, Bulletin No. 19, is hereby corrected to read as follows:

2018-194-BZ

CEQR #19-BSA-066K

APPLICANT – Law Office of Lyra J. Altman, for IRS LLC by Isaac Stern, owner.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) to permit the conversion and enlargement of a two-family home to a single-family home contrary to ZR §23-141 (Floor Area Ratio and Open Space). R2 zoning district.

PREMISES AFFECTED – 2317 Avenue K, aka 1086 East 24th Street, Block 7605, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 15, 2018, acting on Department of Buildings (“DOB”) Application No. 321754669, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed Floor Area Ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed Open Space Ratio is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), and open space ratio (“OSR”), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 30, 2019, and then to decision on that date; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Avenue K and East 24th Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along Avenue K, 100 feet of frontage along East 24th Street, 6,000 square feet of lot area, and is occupied by a two (2) story plus cellar two- (2) family detached dwelling

containing 3,504 square feet of floor area (0.58 FAR), an OSR of 1.21 (4,238 square feet of open space), a front yard on Avenue K with a depth of 13’-1-1/4” and a front yard on East 24th Street with a depth of 15’-9-3/4”, two (2) side yards with widths of 25’-2-3/4” and 11’-1-1/4”, and a detached garage in the northern side yard; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk regulations for lot coverage, open space, floor area, side yard, rear yard or perimeter wall height regulations*, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached two- (2) family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to convert and both vertically and horizontally enlarge the building, resulting in a two- (2) story plus attic and cellar one- (1) family dwelling with 6,020 square feet of total floor area (1.0 FAR), an OSR of 0.58 (3,479 square feet of open space), a front yard on Avenue K with a depth of 13'-1-1/4" and a front yard on East 24th Street with a depth of 15 feet, two (2) side yards with widths of 21 feet and five (5) feet, and a detached garage in the northern side yard; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,762 square feet to 2,453 square feet, the second floor from 1,742 square feet to 2,420 square feet, and the attic from 0 square feet to 1,147 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (3,000 square feet) and a minimum OSR of 1.5 (4,500 square feet of open space based on a complying 0.5 FAR) are required pursuant to ZR § 23-141; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying front yard along Avenue K and the Board notes that, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying front yard predated the 1961 Zoning Resolution

and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 96 qualifying residences, 84 residences (88 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.25, and 14 residences (15 percent) have an FAR of 1.0 or greater; and

WHEREAS, with regards to open space ratio, the applicant demonstrated that, within the Study Area, 91 residences (95 percent) have an OSR less than 1.5, ranging from 1.45 to 0.38, and 16 residences (17 percent) have an OSR of 0.59 or less; and

WHEREAS, at hearing, the Board raised concern regarding the proposal of floor area in excess of 1.0 FAR (6,000 square feet) and while the Board notes herein that the plans submitted by the applicant do not include all floor area deductions available pursuant to applicable provisions of the Zoning Resolution, the Board confirms that the maximum FAR permitted pursuant to this approval is 1.0 (6,000 square feet of floor area); and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA066K, dated December 6, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the conversion and enlargement of a two- (2) family detached dwelling to a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "April 11, 2019"-Eighteen-(18) sheets; and

MINUTES

on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.0 (6,000 square feet of total floor area, excluding all floor area deductions permitted under the applicable provisions of the Zoning Resolution) and a minimum open space ratio of 0.58 (3,479 square feet of open space), as illustrated on BSA-approved plans;

THAT the height and front setback of the subject building shall be subject to verification of their compliance with the Zoning Resolution by the Department of Buildings;

THAT this approval is limited to waiving zoning requirements for the subject site relating to floor area ratio and open space ratio only;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by April 30, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-194-BZ"), shall be obtained within four (4) years, by April 30, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 30, 2019.

***The resolution has been amended to correct part of the conditions which read: ...of 0.59 (3,547 square feet of open space) now reads ...of 0.58 (3,479 square feet of open space). Corrected in Bulletin No. 25, Vol. 104, dated June 21, 2019.**

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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July 5, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|----------------------------------|-----|
| DOCKET | 501 |
| CALENDAR of July 23, 2019 | |
| Morning | 502 |
| Afternoon | 503 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, June 25, 2019**

Morning Calendar504

Affecting Calendar Numbers:

| | |
|--------------|--|
| 218-58-BZ | 77-40 Hewlett Street, Queens |
| 26-02-BZ | 1680 Richmond Avenue a/k/a 3101 Victory Boulevard, Staten Island |
| 49-12-BZ | 34-09 Francis Lewis Boulevard, Queens |
| 67-13-BZ | 945 Zerega Avenue, Bronx |
| 539-66-BZ | 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Queens |
| 982-83-BZ | 191-20 Northern Boulevard, Queens |
| 171-93-BZ | 32-45 75 th Street, Queens |
| 197-02-BZ | 2825 Nostrand Avenue, Brooklyn |
| 209-04-BZ | 109-09 15 th Avenue, Queens |
| 183-09-BZ | 1400 Fifth Avenue, Manhattan |
| 167-14-A | 250 Manhattan Avenue, Brooklyn |
| 2017-285-AII | 200 Amsterdam Avenue, Manhattan |
| 2017-285-A | 200 Amsterdam Avenue, Manhattan |
| 2017-318-A | 155 Johnson Street, Staten Island |
| 1-96-BZ | 600 McDonald Avenue, Brooklyn |
| 56-02-BZ | 317 Dahill Road, Brooklyn |
| 2018-164-BZ | 72-71 Kissena Boulevard, Queens |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 2017-56-BZ | 1321 Richmond Road, Staten Island |
| 2017-272-BZ | 10-19 46 th Road, Queens |
| 2017-273-BZ | 975 East 24 th Street, Brooklyn |
| 2017-309-BZ | 406 Remsen Avenue, Brooklyn |
| 2018-33-BZ | 31-41 97 th Street, Queens |
| 2018-39-BZ | 1249 East 23 rd Street, Brooklyn |
| 2018-53-BZ | 104 DeGraw Street, Brooklyn |
| 2018-56-BZ | 83 Coleridge Street, Brooklyn |

Afternoon Calendar544

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-154-BZ | 966 East 24 th Street, Brooklyn |
| 2018-168-BZ | 1769 East 26 th Street, Brooklyn |
| 2019-15-BZ | 79-40 Cooper Avenue, Queens |

Corrected Calendar545

Affecting Calendar Numbers:

| | |
|----------|---|
| 99-14-BZ | 432-434 West 31 st Street, aka 433-435 West 30 th Street, Manhattan |
|----------|---|

DOCKETS

New Case Filed Up to June 25, 2019

2019-173-BZ

187-01 Hillside Avenue, Block 9960, Lot(s) 0019, Borough of **Queens, Community Board: 8**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-4/R6A Special Downtown Jamaica District. R6A/C2-4 in DJ district.

2019-174-BZ

45-58 Bell Boulevard, Block 7315, Lot(s) 0030, Borough of **Queens, Community Board: 11**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Renzo Gracie Bayside) within the cellar of an existing commercial building contrary to ZR §32-10. C2-4/R4B zoning district. C2-2/R4B district.

2019-175-A

30 West 39th Street, Block 00840, Lot(s) 30, Borough of **Manhattan, Community Board: 5**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment on December 20, 2018. M1-6 zoning district. M1-6 district.

2019-176-A

17 Eastern Parkway, Block 1172, Lot(s) 6163, Borough of **Brooklyn, Community Board: 8**. Appeal of a New York City Department of Buildings determination dated May 21, 2019, that musical and spoken word events held in the Temple's sanctuary and ballroom are not "accessory use". R8X District. R8X district.

2019-177-BZ

56 West 8th Street, Block 00553, Lot(s) 0014, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (CorePower Yoga) contrary to ZR §32-10. C4-5 and R6 Special Limited Commercial District and Greenwich Village Historic District. C4-5 and R6/LC District district.

2019-178-BZ

1426 East 24th Street, Block 7677, Lot(s) 0030, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area and open space ratio) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2019-179-BZ

118 West 28th Street, Block 00803, Lot(s) 0051, Borough of **Manhattan, Community Board: 5**. Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district. M1-6 district.

2019-180-BZ

1253 Lexington Avenue, Block 1532, Lot(s) 7502, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (CorePower Yoga) to be located on a portion of the first floor of an existing fifteen-story mixed-use building contrary to ZR §32-10. C1-8X zoning district. C1-8X district.

2019-181-BZ

57 Leonard Street, Block 00177, Lot(s) 0005, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Y7 Studio) to be located on the ground floor of an existing five-story mixed-use building contrary to ZR §32-10. C6-2A zoning district. C6-2A district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JULY 23, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 23, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

143-01-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for Thomas R. Birchard, owner.

SUBJECT – Application July 23, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) which permitted the operation of a veterinarian’s office contrary to ZR §22-10. R8B zoning district.

PREMISES AFFECTED – 348 East 9th Street, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

193-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Twenty Nine Great Jones Street Corp., owner; Great Jones Spa, LLC, lessee.

SUBJECT – Application April 23, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (Great Jones Spa) which expires on April 21, 2018. M1-5B zoning district.

PREMISES AFFECTED – 27-29 Great Jones Street, Block 530, Lot 20 (7502), Borough of Manhattan.

COMMUNITY BOARD #2M

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Bossert LLC, owner.

SUBJECT – Application January 11, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on January 8, 2017. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

2019-13-A & 2019-14-BZY

APPLICANT – Ross F. Moskowitz, Esq., for SDF 47 Ryerson Street, LLC, owner.

SUBJECT – Application January 18, 2019– Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment on December 20, 2018. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district.

PREMISES AFFECTED – 11-31 Ryerson Street, Block 1877, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

CALENDAR

REGULAR MEETING JULY 23, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 23, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-261-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.
SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11(Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.
PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.
COMMUNITY BOARD #9BK

2019-40-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for 177 East 73rd Owner LLC.; 175 East 73rd Owner LLC, lessee.
SUBJECT – Application March 1, 2019 – Variance (§72-21) to permit the enlargement of a House of Worship (UG 4) (Persian Jewish Center) contrary to ZR §24-36 (rear yard); ZR §24-11 (lot coverage); ZR §24-50 & 23-662 (minimum base height and maximum height of buildings and setback). R8B (NYC Individual Landmarked Buildings)
PREMISES AFFECTED – 175-179 East 73rd Street, Block 1408, Lot(s) 30 and 31, Borough of Manhattan.
COMMUNITY BOARD #8M

2019-58-BZ

APPLICANT – Law Office of Jay Goldstein, for JSB Realty No. 2, LLC, owner; CEC Entertainment d/b/a Chuck E. Cheese's, lessee.
SUBJECT – Application March 19, 2019 – Special Permit (§73-44) to permit the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (*Chuck E. Cheese's*) contrary to ZR §32-21. C2-2 zoning district.
PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.
COMMUNITY BOARD #10Q

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 25, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

218-58-BZ

APPLICANT – Nasir J. Khanzada, for Norman Dawson, owner.

SUBJECT – Application September 20, 2018 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on July 29, 2018; Amendment to permit the legalization of the addition of an accessory convenience store; Waiver of the Board’s Rules.

PREMISES AFFECTED – 77-40 Hewlett Street, Block 08555, Lot 60, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 6, 2018, acting on DOB Application No. 421385637, reads in pertinent part:

Propose to extend the term of zoning variance for a period of ten (10) years past July 29, 2018, propose to alter existing gas station to allow [...] the convenience store, located in a C1-2 within an R2A zoning district is all contrary to the resolutions, which is all contrary to the resolutions and plans adopted by the Board of Standards and Appeals under Cal. # 218-58-BZ and must be referred back to the BSA for approval; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, extension of the term of a variance, previously granted by the Board, which expired on July 29, 2018, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on March 5, 2019, after due notice by publication in *The City Record*, with continued hearings on April 23, 2019, and June 25, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood;

and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Hewlett Street, between 77th Road and Union Turnpike, in an R2A (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 143 feet of frontage along Hewlett Street, 115 feet of depth along the northern side lot line, 89 feet of depth along the southern side lot line, 12,875 square feet of lot area and is occupied by an automotive service station with an existing one- (1) story accessory building (2,732 square feet of floor area) containing a convenience store, storage and four (4) repair bays; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958, when, under the subject calendar number, the Board granted a variance to permit, for a term of 15 years, to expire on July 29, 1973, the erection and maintenance of a gasoline service station and uses lawfully accessory thereto, substantially as proposed and indicated on plans filed with the application, on condition that all buildings and uses then on the premises be leveled substantially to the grade of Hewlett Street; the premises be constructed as indicated on plans filed with the application; the accessory building be of the design and construction as shown on such plans, without cellar and faced on all sides with face brick and located where indicated on the plot plan not nearer than 20 feet from the rear lot line or 25 feet from the side lot line to the west as shown; pumps be of a low approved type erected not nearer than 15 feet to the street building line of Hewlett Street; gasoline storage tanks not exceed 12 550-gallon approved tanks; on all lot lines except the street building line there be erected a woven wire fence of the chain link type on a masonry base to a total height of not less than 5’-6”;

curb cuts be restricted to three (3) curb cuts each not over 30 feet in width to Hewlett Street, where shown, and with no curb cut nearer than five (5) feet to a side lot line as prolonged; sidewalks and curbing abutting the premises be reconstructed or repaired to the satisfaction of the Borough President; planting be maintained where proposed toward the rear with a separating curbing at each side of the accessory building to the lot line; such curbing be not less than 12 inches in height and six (6) inches in width; such landscaping be of suitable planting materials and shrubbery; under Section 7h there may be parking and storage of motor vehicles of the pleasure car type only so parked where they will not interfere with the servicing of the station; under Section 7i there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building; signs be restricted to permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps excluding all roof signs and temporary signs and advertising devices but permitting the erection within the building line where shown of two (2) post standards each for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such signs to extend beyond the building line

MINUTES

for a distance of not more than four (4) feet; such fences on the side lot lines be fitted with masonry posts for fence support at the lot lines; and, all permits be obtained and all work completed within one (1) year, by July 29, 1959; and

WHEREAS, on July 10, 1973, under the subject calendar number, the Board amended the resolution and granted an extension of the term, for ten (10) years, to expire on July 29, 1983, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on October 12, 1983, under the subject calendar number, the Board further amended the resolution, pursuant to ZR § 11-411, and granted a five- (5) year extension of the term, to expire on July 29, 1988, on condition that there be no parking of motor vehicles on the sidewalk area and that the station be operated at all times in such a fashion so as to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 12, 1984; and

WHEREAS, on August 5, 1986, under BSA Cal. No. 1044-85-BZ, the Board, pursuant to ZR § 11-412, permitted a one- (1) story enlargement at the rear of the existing automotive service station on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the grant be limited to a term to expire July 29, 1988, so as to coincide with the expiration of the most recent extension of term of the original variance granted under the subject calendar number, BSA Cal. No. 218-58-BZ; the owner comply with the conditions set forth in the conditional negative declaration; landscaping be adequately maintained and replaced when necessary; the hours of operation for repairs be limited to 8:00 a.m. to 6:00 p.m.; all repair work take place within the building and not in the open; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; the conditions appear on the certificate of occupancy; DOB issue no permits for a period of 31 days from the date of the resolution; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by August 5, 1990;

WHEREAS, on November 30, 1988, under the subject calendar number, the Board further amended the resolution adopted on July 29, 1958, as amended through October 12, 1983, in light of the fact that the relief granted under BSA Cal. No. 1044-85-BZ was not availed of, and extended the term for ten (10) years, to expire on July 29, 1998, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by November 30, 1989; and

WHEREAS, on November 27, 1990, under the subject calendar number, the Board further amended the resolution, pursuant to ZR § 11-412, to permit a change to the design and arrangement of the existing automobile service station, to erect a new steel irregular shaped canopy over two (2) new gasoline pump islands with new multiple product dispenser ("MPD") self-serve pumps, to erect a new metal shelter and to alter the existing office and sales area of the accessory building to accommodate an attendant's booth, all substantially as shown on revised drawings of proposed conditions, on condition that a two- (2) foot high steel guard rail be installed along the south lot line; the fences be straightened where required; the sidewalk and curb be maintained and repaired and there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year, by November 27, 1991; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on May 19, 1992, under the subject calendar number, the Board further amended the resolution to reduce the size of the new canopy, omit new metal shelter and install two (2) new MPD pumps on each pump island, instead of one (1) on each island, on condition that the premises be in substantial compliance with present conditions drawings filed with the application; there be no parking on the sidewalks; the landscaping be maintained and replaced when necessary; the premises be kept graffiti free; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on December 14, 1993, under the subject calendar number, the Board further amended the resolution to extend the time to complete construction for 19 months from May 19, 1993, to expire December 19, 1994; and

WHEREAS, on February 2, 1999, under the subject calendar number, the Board further amended the resolution, pursuant to ZR §§ 11-411 and 11-412, to extend the term and permit a proposed enlargement along the northerly portion of the existing accessory building, on condition that the term be limited to ten (10) years, to expire on July 29, 2008; the premises remain graffiti free at all times; no vehicles be parked on sidewalks; all signs be maintained in accordance with BSA-approved plans and the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by February 2, 2000; and

WHEREAS, on September 9, 2008, under the subject calendar number, the Board granted a ten (10) year extension to the term, to expire on July 29, 2018, on condition that any and all work substantially conform to drawings filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; the site be maintained free of debris and graffiti; all landscaping be planted and maintained as per the BSA-approved plans; the conditions appear on the certificate of

MINUTES

occupancy; a certificate of occupancy be obtained by September 9, 2009; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the prior term having expired, the applicant now seeks an extension of the term of the variance, first granted in 1958; and

WHEREAS, in addition, because this application was filed less than 2 years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2) to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) of the Board's Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant represents that the use at the site has been continuous since the expiration of the term in July 2018, and, absent the waiver, substantial prejudice would result; and

WHEREAS, the applicant also seeks an amendment to legalize the conversion of the accessory automotive service station building to an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99, as well as additional signage, an air pump and vacuum, a new parking layout, and to permit a new privacy fence along the western side lot line and changes to the dispenser pump island layout; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the sales area of the accessory convenience store is 321 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (2,575 square feet); and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, and, instead, proposes to legalize interior alterations to the office space and perform non-structural site modifications as are permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of public hearings, the Board raised concerns regarding the operator's compliance with the condition prohibiting the parking of cars on the sidewalk and questioned the maneuverability of the site; and

WHEREAS, in response, the applicant proposed additional parking on site, signage communicating the prohibition of sidewalk parking, and provided photographs to the Board demonstrating the installation of Board-requested site improvements; and

WHEREAS, by letter dated March 1, 2019, the Fire Department states that a review of their records indicates that the subject automotive service station is current with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system, and the Fire Department has no additional comments or recommendations relative to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules and reinstatement of the variance are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(2) of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, *amends* a previously-granted variance to extend the term for ten (10) years, to expire July 29, 2028, and to legalize, on a site located within an R2A (C1-2) zoning district, the conversion of a portion of the existing one- (1) story accessory service building into an accessory convenience store, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 5, 2019"-Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on July 29, 2028;

THAT the owner shall ensure that there is no parking on the sidewalks and enforce the condition accordingly;

THAT lighting shall be maintained shielded down and away from residential uses;

THAT asphalt, fencing, planting and the building shall be maintained, as per BSA-approved plans, and shall be painted, repaired or replaced as needed to maintain them in first-class condition;

THAT the premises shall remain graffiti free at all times;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 218-58-BZ") shall be obtained within one (1) year, by June 25, 2019;

THAT all conditions from prior not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

MINUTES

Adopted by the Board of Standards and Appeals, June 25, 2019.

26-02-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty LLC, owner.

SUBJECT – Application December 20, 2018 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses, which expired on April 15, 2017; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue a/k/a 3101 Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and procedure and extension of time to obtain a certificate of occupancy, which expired on March 28, 2018; and

WHEREAS, a public hearing was held on this application on February 12, 2019, after due notice by publication in *The City Record*, with continued hearings on March 26, 2019, and June 25, 2019, and then to decision on that date; and

WHEREAS, the subject site is located on the northwest corner of Richmond Avenue and Victory Boulevard, within an R3X (C1-2) zoning district, on Staten Island; and

WHEREAS, the site has approximately 126 feet of frontage along Richmond Avenue, 94 feet of frontage along Victory Boulevard, 12,385 square feet of lot area and is occupied by an automotive service station, one- (1) story accessory building and gasoline pumps; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 2002, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to legalize the operation of an existing automotive service station (Use Group (“UG”) 16), the removal of the center island and the addition of four (4) multiple product dispensers (“MPD”), the replacement of three (3) existing 4,000-gallon tanks and a 2,000-gallon tank by four (4) 10,000 gallon tanks, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term of the variance be limited to ten (10) years, to expire on December 10, 2012; the conditions be noted on the certificate of occupancy; substantial construction be completed in accordance with ZR § 72-23, by December 10, 2006; the approval be limited to the

relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on January 13, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the time to obtain a certificate of occupancy, to July 13, 2008, and to legalize site modifications, including the conversion of a portion of the service building to an accessory convenience store, the paving of an area designated for landscaping at the southwest corner of the site, the placement of a waste oil tank at the northwest corner of the site, the placement of an air machine at the southwest corner of the site, and the upgrading of the five (5) existing 4,000 gasoline storage tanks instead of the installation of four (4) 10,000-gallon tanks, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; a certificate of occupancy be obtained by July 13, 2009; all signage comply with C1 zoning district regulations; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on July 28, 2009, under the subject calendar number, the Board further amended the resolution to extend the time to obtain a certificate of occupancy, to January 28, 2010, on condition that the use and operation of the site substantially comply with BSA-approved plans; all signage comply with C1 zoning district regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on February 9, 2010, under the subject calendar number, the Board further amended the resolution to extend the time to obtain a certificate of occupancy, to February 9, 2011, on condition that the use and occupancy of the site comply with BSA-approved plans associated with the prior grant; all signage comply with C1 zoning district regulations; all conditions from prior resolutions not

MINUTES

specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on April 14, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit the enlargement and conversion of the one- (1) story building at the site to an accessory convenience store and to legalize an existing enclosure for on-site remediation equipment, two (2) existing 12,000-gallon tanks, a 0'-6" canopy setback to Richmond Avenue and 42'-0" canopy setback to Victory Boulevard and a fenced trash enclosure and realignment of permitted signage, and to extend the term for ten (10) years, to expire on December 10, 2022, on condition that all work substantially conform to plans filed with the application; the building have a maximum of 2,519 square feet of floor area; the temporary structure containing remediation equipment be removed upon completion of the required remediation of the site and parking be restored to the area currently occupied by the aforesaid temporary structure as per BSA-approved plans; the site be maintained free of debris and graffiti; the trash enclosure be in accordance with the BSA-approved plans; signage be in accordance with C1 zoning district regulations; landscaping and buffering be maintained in accordance with the BSA-approved plans; lighting be directed downward and away from adjoining residences; the conditions be noted on the certificate of occupancy; a certificate of occupancy be obtained by April 15, 2017; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, at hearing, the Board raised concerns regarding compliance with the condition that the temporary structure containing remediation equipment be removed upon completion of the required remediation of the site; and

WHEREAS, in response, the applicant represented that the remediation was completed in 2016 and submitted

photographs of the site confirming that the remediation tent was removed; and

WHEREAS, by letter dated January 31, 2019, the Fire Department states that a review of Fire Department records indicates that the subject service station is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system and the Fire Department has no objection to the application; and

WHEREAS, based upon its review of the record, the Board finds that a two (2) year extension of time to obtain a certificate of occupancy is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* § 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated December 10, 2002, as amended through April 14, 2015, so that as further amended this portion of the resolution reads: "to grant a two (2) year extension of time to obtain a certificate of occupancy to June 25, 2021, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked 'December 27, 2018'-Eight (8) sheets; and *on further condition*:

THAT the term of the variance grant shall expire on December 10, 2022;

THAT the building shall have a maximum of 2,519 square feet of floor area;

THAT the site shall be maintained free of debris and graffiti;

THAT the trash enclosure shall be in accordance with the BSA-approved plans;

THAT signage shall be in accordance with C1 zoning district regulations;

THAT landscaping and buffering shall be maintained in accordance with the BSA-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 26-02-BZ") shall be obtained within two (2) years, by June 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 25, 2019.

MINUTES

49-12-BZ

APPLICANT – Powerhouse Gym “FLB” Inc., for Laterra, Inc., owner; Powerhouse Gym “FLB” Inc., lessee.

SUBJECT – Application August 8, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Powerhouse Gym) in a portion of an existing one-story commercial building which expired on June 12, 2017; Waiver of the Rules. C2-2R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, Block 6077, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for waivers of the Board’s Rules of Practice and Procedure, an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expired on June 19, 2017; and

WHEREAS, a public hearing was held on this application on June 25, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) letter from the Auburndale Improvement Association, a civic association within whose boundary lines the subject site is located, stating no objection to the subject application; and

WHEREAS, the subject site is located on the northeast corner of Francis Lewis Boulevard and 34th Avenue, in an R5B (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 101 feet of frontage along Francis Lewis Boulevard, 108 feet of frontage along 34th Avenue, 10,156 square feet of lot area and is occupied by an existing one- (1) story plus cellar commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the cellar (4,736 square feet of floor space) and first floor (6,239 square feet of floor area) of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 1997, when, under BSA Cal. No. 215-96-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, operating as “Powerhouse Gym,” on a portion of the first floor of the subject one- (1) story building, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no change in ownership or operating control of the PCE without prior

application to and approval from the Board; all individuals practicing massage at the premises possess valid New York State licenses for such practice and be prominently displayed; the special permit be limited to a term of ten (10) years, to expire on December 1, 2006; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one (1) year, by July 22, 1998; and

WHEREAS, on June 19, 2012, under the subject calendar number, the Board granted a new special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, operated as “Powerhouse Gym,” on portions of the cellar and first floor of the subject one- (1) story building, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on June 19, 2017; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; all massages be performed by New York State licensed massage therapists; the site be maintained free of graffiti; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term of the special permit; and

WHEREAS, the applicant represents that the current operator of the PCE, Powerhouse Gym, has operated at the subject site continuously since expiration of the term and the applicant would face substantial prejudice absent a waiver of the Board’s Rules; and

WHEREAS, by letter dated June 22, 2019, the Fire Department states that the place of assembly space and the sprinkler system have been inspected and found to be in compliance with the Fire Department’s Rules and Regulations, and the Fire Department has no objection to the Board’s rendering a decision on the subject application, as the Bureau of Fire Prevention will continue to inspect these premises annually; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the

MINUTES

conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated June 19, 2012, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on June 19, 2027, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘August 15, 2018’-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 19, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the site shall be maintained free of graffiti;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 49-12-BZ”) shall be obtained within one (1) year, by June 25, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 25, 2019.

67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building’s determinations (a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA’s prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A. PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Appeal denied.

THE VOTE –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, this is a remand under *OTR Media Group, Inc. and OTR 945 Zerega LLC v. Board of Standards and Appeals of the City of New York*, No. 158646/2016 (Sup. Ct. N.Y. County March 20, 2018), which instructs the Board to consider this interpretive appeal in light of the Board’s decision in *2368 12th Avenue, Manhattan*, BSA Cal. No. 24-12-A (August 7, 2012) (the “2368 Case”); and

WHEREAS, for the reasons that follow, the Board denies this appeal; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with continued hearings on March 19, 2019, and June 25, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject site contains a rooftop sign (the “Zerega Sign”) within 200 feet of an arterial highway; and

WHEREAS, on March 27, 2008, the Department of Buildings (“DOB”) issued Permit No. 210039224 for the repair of the structural elements of the Sign and on April 21, 2008, DOB issued Permit No. 201143253 for the repair of the Sign itself, however, on January 31, 2013, DOB revoked the Permits based on its determination that the Sign was not established as a non-conforming advertising sign; and

WHEREAS, on September 13, 2013, under the subject calendar number, the Board upheld DOB’s determination that the then-appellant, the lessee of the sign, failed to provide evidence of the establishment of an advertising sign and denied the appeal, finding that DOB properly denied the Sign registration because the sign lessee has not met its

MINUTES

burden of demonstrating that the Sign was established prior to November 1, 1979; and

WHEREAS, specifically, the Board agreed with DOB that nothing in a June 12, 1978 lease between Joma Manufacturing Company (of the Premises) and the advertising company provided a basis for the Board to determine when the Sign was actually constructed; the 1978 lease speaks to, at most, when the Sign could have been constructed; that the only other item of evidence that is somewhat contemporaneous with the 1978 lease is a July 15, 1980 Work Completion Notice, which suggests that the Sign construction was completed more than eight months after November 1, 1979, the required date of establishment in ZR § 42-55; and

WHEREAS, on September 16, 2014, under the subject calendar number, the Board reopened the record by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board's decision in BSA Cal. No. 96-12-A (the "12th Avenue case"), and, again, denied the appeal finding that, unlike the appellant in the 12th Avenue case, the appellant in the subject case did not submit a reconsideration or any similar document, which is viewed to be among the most valuable forms of evidence DOB accepts pursuant to TPPN 14/1988, and, because the Board found that the Sign was never established as non-conforming, it was unnecessary to determine whether the Zoning Resolution permitted its removal and reconstruction or whether the presumption of continuity impels the Board to find, based on the appellant's evidence, that the Sign was not discontinued; and

WHEREAS, on July 12, 2016, under the subject calendar number, the Board, again, reopened the record by court remand for supplemental review and found that, while the Zerega Sign may have continuously existed at the premises since its establishment prior to November 1, 1979, in light of a lease by Philip Morris to utilize the 1,585 square feet of floor area it rented on the ground floor of the Premises for any number of business operations, including the storage and distribution of tobacco products, even if the Sign was established as an advertising sign prior November 1, 1979, its advertising use was abandoned even if the Zerega Sign was established as an advertising sign prior November 1, 1979, its advertising use was abandoned and the Zerega Sign has not continuously been used for advertising purposes since its establishment prior to November 1, 1979; and

ISSUE PRESENTED

WHEREAS, the Board considers whether the off-site advertising use of the Zerega Sign has continued, uninterrupted for a period of two or more years, since November 1, 1979 (the "Establishment Date"); and

WHEREAS, for the purposes of this appeal, the Board assumes that appellant has demonstrated the existence of the Zerega Sign on the Establishment Date, and that the Zerega Sign was used for off-site advertising on the Establishment Date, thereby rendering it a legal "nonconforming use"; and

DISCUSSION

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board "may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of" the Zoning Resolution; and

WHEREAS, the Board has reviewed and considered—but need not follow—DOB's interpretation of the Zoning Resolution in rendering the Board's own decision in this appeal, and the standard of review in this appeal is de novo; and

WHEREAS, however, the Board finds that appellant has failed to demonstrate the continuous use of the Zerega Sign for off-site advertising purposes, uninterrupted for a period of two or more years, since the Establishment Date; and

WHEREAS, in rendering its decision herein, the Board has considered (a) the history of the City's sign regulations, (b) the City's regulation of construction (including "legalizing" illegal work), (c) the inadequate evidence of the Zerega Sign's continuous off-site advertising, (d) the Board's prior decisions, and (e) the parties' positions (including DOB's explanation of its prior decisions); and

A. History of Sign Regulations

WHEREAS, since 1940, the City of New York has prohibited off-site advertising signs within 200 feet and within view of its parks and arterial highways, *see Infinity Outdoor, Inc. v. City of New York*, 165 F. Supp. 2d 403, 406 (E.D.N.Y. 2001); and

WHEREAS, despite this prohibition and undeterred by the City's limited enforcement efforts, outdoor-advertising companies erected illegal arterial advertising signs between 1940 and 1979 in violation of the Zoning Resolution, *see Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99 (2d Cir. 2010); and

WHEREAS, however, in 1979, facing an impending loss of millions of dollars in federal funding, the City amended the Zoning Resolution to grant "legal non-conforming use" status¹ to existing illegal arterial advertising signs in order to comply with the federal Highway Beautification Act, *see Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99 (2d Cir. 2010); and

WHEREAS, in 2001, recognizing that "the outdoor advertising industry unquestionably employed creative methods to obtain building permits for arterial highway signs," the City created a sign-registration program for outdoor-advertising companies to increase oversight and improve enforcement of the Zoning Resolution's sign

¹ Generally, the Zoning Resolution requires that a nonconforming use be "lawful" before a zoning change with which the use no longer complies, *see* ZR § 12-10 (nonconformity definition); however, the 1979 text amendment conferred "legal non-conforming use" status on then-illegal off-site advertising signs, *see* ZR § 42-55.

MINUTES

regulations, *Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99–100 (2d Cir. 2010); and

B. Legalization of Illegal Construction

WHEREAS, for more than a century, the City has regulated the construction of buildings and structures—including billboards—through its building code (the “Building Code”), see *People ex rel. Van Beuren & New York Bill Posting Co. v. Miller*, 161 A.D. 138, 139 (N.Y. App. Div. 1914); and

WHEREAS, a central feature of the Building Code’s regulatory scheme is that, before erecting a structure, a permit to do so must be obtained from DOB, see *People ex rel. Van Beuren & New York Bill Posting Co. v. Miller*, 161 A.D. 138, 140 (N.Y. App. Div. 1914); and

WHEREAS, this permit application process generally requires plans and specifications demonstrating compliance with applicable laws, including the Zoning Resolution, to be submitted for review and approval by DOB; and

WHEREAS, if the permit application and DOB’s review indicate the proposed construction complies with applicable laws, a permit will issue; and

WHEREAS, in the ordinary course, construction then proceeds as authorized by this permit, and the construction is then “signed off” as compliant with the plans and specifications; and

WHEREAS, notwithstanding this general framework, individuals sometimes violate the Building Code by performing illegal construction without a permit; and

WHEREAS, the Building Code provides that maintaining illegal construction is a continuing violation until the violation is cured; and

WHEREAS, after this occurs, the individual may opt to cure the violation by either removing or “legalizing” this illegal construction; and

WHEREAS, “legalizing” illegal construction—a term of art—involves procuring a permit for the already-built construction; and

WHEREAS, as such, a “legalization” application requires “as-built” plans and specifications demonstrating compliance of the illegal construction with applicable laws, including the Zoning Resolution, to be submitted for review and approval by DOB; and

WHEREAS, if the “legalization” application and DOB’s review indicate the “as-built” illegal construction complies with applicable laws, the “legalization” application will be approved, a permit may issue, and the “as-built” illegal construction may be “signed off” as compliant with the plans and specifications; and

WHEREAS, if the “legalization” application or DOB’s review do not indicate the “as-built” illegal construction complies, the “legalization” application cannot be approved; and

WHEREAS, because of the 1979 amendment to Zoning Resolution, many previously illegal arterial advertising signs that had been erected without proper permits underwent this “legalization” process, which DOB later codified in OPPN 10/99, setting forth filing standards

for which types of applications to file for different billboard typologies (depending, for instance, on whether electrical work had been involved to illuminate the sign); and

WHEREAS, as discussed throughout this appeal, in the 1980s, many outdoor-advertising companies availed themselves of the opportunity to “legalize” their signs where their construction complied with applicable laws, including the Zoning Resolution, as amended in 1979; and

WHEREAS, however, not all arterial advertising signs could be legalized; and

WHEREAS, for instance, where an applicant cannot furnish evidence that an arterial-advertising sign existed as of the specified date, DOB denies an application to legalize an arterial-advertising sign as “legal non-conforming use”—a process that involves considering and weighing evidence, specified as having different weights of credibility in TPPN 14/88; and

WHEREAS, the denied applicant then faces two choices: removing the illegal sign structure or salvaging the illegal sign structure by converting it to lawful use as an accessory business sign; and

WHEREAS, the latter approach requires filing an application to “legalize” the newly converted accessory business sign structure with DOB to ensure compliance with applicable laws, including the Building Code (to review the safety of the illegal sign structure with construction standards) and the Zoning Resolution; and

WHEREAS, however, not all sign structures for newly converted accessory business sign structures can be legalized; and

WHEREAS, for instance, where an applicant cannot demonstrate that a business sign meets the Zoning Resolution’s “accessory use” definition, DOB denies the legalization application for failure to comply with applicable laws; and

WHEREAS, accordingly, this “legalization” process reflects an intricate interplay between the technical and procedural aspects of the City’s regulation of construction that requires a significant depth of expertise to administer; and

C. Evidence in the Record

WHEREAS, with this regulatory backdrop in mind, the Board next considers the evidence in the record but finds that appellant has failed to demonstrate that the Zerega Sign has been used continuously for advertising since 1979 because the record reflects a discontinuance of more than two years; and

WHEREAS, more specifically, an accessory business sign was lawfully established at the subject site in January 1987 when permits to install two accessory business signs with the text “Metro Self Storage” were issued to the owner of the building, Metro Self Storage; and

WHEREAS, use of the building for storage was a lawful principal use at the time; and

WHEREAS, the deed from 1985 corroborates that Metro Self Storage was the owner of the building at the time; and

MINUTES

WHEREAS, use of the building as self-storage is established by an application to convert the building to self storage, which resulted in a certificate of occupancy; and

WHEREAS, accordingly, use of the building for storage was a lawful principal use; and

WHEREAS, converting the Zerega Sign's structure from use as an off-site advertising sign to an on-site accessory business sign reflected a change to a conforming use; and

WHEREAS, this accessory sign was in place for at least three years; and

WHEREAS, the owner applied in 1990, filling out an official PW1 form (Exhibit H, DOB, May 29, 2019) and certifying the description of work as follows: "to paint existing sign on existing structure variable copy Marlboro" and "to legalize the face of the existing sign;" and

WHEREAS, the application materials in the record also indicate that, in 1990, DOB scrutinized the legalization application for the accessory business sign—including a May 25, 1990, submission and a June 11, 1990, submission of DOB sign-off on additional information (Exhibit I, DOB, May 29, 2019); and

WHEREAS, the additional information form, provided by the owner in 1990, certifies:

"Philip Morris Marlboro business [is] occupying the first floor of the building."

"They have office space and storage for sales and distribution of cigarettes."

"See attached photos and rental payments attached."

WHEREAS, this Additional Information form thus presents credible evidence directly from the owner, which had contemporaneous knowledge of on-site conditions at the time, that Philip Morris had an active presence—both offices and storage—in the subject building in 1990; and

WHEREAS, this Additional Information form² also corroborates that DOB reviewed a complete set of application materials—including the referenced photographs and rental payments; and

WHEREAS, these legalization application materials were contemporaneous evidence supporting the actual presence of the then-existing business sign³; and

WHEREAS, although the record does not indicate whether the Philip Morris lease was presented to DOB along with the 1990 legalization application, DOB in this appeal presents credible analysis that the space-rental income constituted approximately 70 percent of the Zerega Sign's rental income—a further indicator of the likelihood that the Zerega Sign was accessory to Philip Morris's principal use;

² Additional Information forms customarily follow requests by DOB for further support of an application before a permit will issue and to resolve DOB objections to an incomplete application.

³ Had the Zerega Sign not existed as a business sign, the application would have been filed with work proposed instead of work to be legalized.

and

WHEREAS, with respect to appellant's specious assertions that a business sign may only be "accessory" to the principal use of a building, the Zoning Resolution says no such thing; and

WHEREAS, under the accessory use definition, an accessory use must be "clearly incidental" to a "principal use" located on the same zoning lot; and

WHEREAS, in this context, the use of the term "accessory" refers to the principal use to which a sign may be accessory, but not the building itself, as a building may contain many uses, each of which are entitled to have separate, and different, accessory uses; and

WHEREAS, contrary to appellant's assertions, the Zoning Resolution allows that a single building may contain more than one principal use, and an accessory business sign may accordingly be related to any principal use—so long as they are both located on the same zoning lot. *See* ZR § 12-10 (accessory use definition); and

WHEREAS, furthermore, where accessory business signs are permitted, each separate establishment is entitled to its own accessory business sign, *see* ZR § 42-50; and the Zoning Resolution does so by directing that each establishment be treated as though it were its own zoning lot; and

WHEREAS, with respect to the 1991 map purporting to show all of Phillip Morris's warehouses at the time. (Exhibit 2, appellant, May 29, 2019), it is impossible to ascertain the criteria (such as size or ownership) used for inclusion on the submitted map when the listed warehouses servicing the City of New York were on Long Island and Westchester, and it is not inconsistent to believe that Philip Morris would have operated smaller staging and management areas closer to their delivery points—such as the facility at the subject site; and

WHEREAS, in 1990, the owner certified that Phillip Morris was using the subject site as "office space" and "for sales and storage of cigarettes," which corroborates that Phillip Morris used the subject site as a smaller staging and management area, rather than a full-building warehouse; and

WHEREAS, although there is no way for the Board to know whether this use of the building would have been sufficient for listing on the 1991 warehouse map, these activities were sufficient for DOB to accept the evidence of this activity as a principal use under the Zoning Resolution; and

WHEREAS, an accessory sign was lawfully established due to permits issued for accessory sign to Metro Self-Storage; and

WHEREAS, the accessory sign use was established by deed and application to change its use and certificate of occupancy for the same; and

WHEREAS, pursuant to Z.R. § 52-61, a change from a non-conforming use to conforming use is an abandonment if it lasts for 2 or more years; and

WHEREAS, the accessory sign existed at the Premises for at least 3 years as evidenced by the owner's 1990 sign

MINUTES

application to "repaint existing [1987 accessory business] sign" and to legalize the face of the existing sign; and

WHEREAS, the proof submitted in connection with the 1990 sign application was scrutinized by DOB and determined that it was a valid accessory as evidenced by the June 11, 1990, DOB signoff of the additional information form; and

WHEREAS, the owner stated to DOB that Phillip Morris occupied the first floor with office space and storage, on which were notes referring to attached pictures and rental payments; and

WHEREAS, this customarily follows a request from DOB for incomplete applications; and

WHEREAS, contemporaneous representations of the applicant for the sign, to recognize it as a business sign, were made to DOB to accept this characterization after requesting further info and DOB concluded "OK to consider as a business sign;" and

WHEREAS, DOB records do not indicate whether the "Phillip Morris" lease was sent to DOB, but does indicate their consideration of the space rental income, which was 70% of the sign rental income, and demonstrated to them that the Sign was is accessory; and

WHEREAS, the appellant attempted to show that the rental space was not in use as a warehouse by demonstration of a "Phillip Morris" distribution map—without any indication of what is required to be included in that distribution map—and does not dispel that "Phillip Morris" used the Premises as a staging area that would be smaller than a traditional warehouse; and

WHEREAS, DOB's criteria for a business sign is sufficient to issue a permit for an accessory sign and it is unreasonable for this Board to expect DOB to dig deeply into ownership tenant applicant records to issue a permit; and

WHEREAS, DOB entitled to rely on professionals' representations made in connection with application filings and DOB has rejected sign registration when evidence in their record established a sign as an accessory, and not advertising, use; and

WHEREAS, had the permit applicant, in 1990, had proof to establish the sign for advertising purposes, they would have done so; and

WHEREAS, the accessory business sign with text "Metro Self Storage" was installed in 1987 and was removed in 1990 for a "Marlboro" sign and constitutes abandonment; and

WHEREAS, the timing is further supported by a January 31, 1996, letter from Allied Outdoor, from George Newman, Chairman of the Board, to Metro Self Storage, containing hand notations on the letter regarding lease renewal, dated February 1996, that the "lease was changed to eight (8) years" and that "even with 8 y[ea]r lease" it is "due to expire [on] March 31 1998," consistent with the April 1990 application to legalize the "Marlboro" sign at the Premises; and

WHEREAS, accordingly, based on the foregoing, the

record indicates the use of the sign for advertising purposes was discontinued for more than two years and any legal non-conforming use of an advertising sign was therefore abandoned; and

D. Prior BSA Decisions

WHEREAS, the Board examined the acceptable proofs pursuant to the hierarchy of evidence under TPPN 14/1988—(1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits—found substantial evidence to support DOB's determination that the alleged sign was accessory and that later affidavits contradicting earlier proofs, such as a permit to legalize an accessory business sign, unpersuasive. (BSA Cal. No. 68-13-A, January 13, 2014, "330 Bruckner Case"); and

WHEREAS, in the 330 Bruckner Case, the Board found substantial evidence to support DOB that sign was accessory: later affidavits contradicting earlier proofs are not persuasive and distinguishes permits and city agency records as the best proof, from affidavits as having the least probative value; and

WHEREAS, in contrast to the evidence in the record of this appeal, the sole proof provided to DOB in the 2368 Case was an affidavit stating that Hilfiger sign was accessory to use of space in the building for "storage, staging, and repair of display fixtures as well as administrative function related to such use"—without other materials; and

WHEREAS, DOB also provided explanations for rejecting registration for an alleged nonconforming advertising sign in light of evidence that established the sign's history as accessory; and (Flatbush Avenue.)

WHEREAS, in other instances, DOB accepted proof of the establishment of advertising signs based on ownership, occupancy, DOB permitting history, photographic evidence, and a lease with an outdoor-advertising company—none of which was refuted by evidence of discontinuance like in this appeal; and (Queens Boulevard, Laurel Hills Boulevard.)

WHEREAS, furthermore, it was unclear from appellant's assertions whether any of these locations were subject to so-called "sham" leases; and

WHEREAS, additionally, it would be unreasonable to expect DOB to investigate ownership, tenant records, and site history each time DOB issues a permit because a complete understanding of site conditions can only be gleaned through firsthand inspection and a plethora of private documents, most of which are in an owner or other private party's possession but never recorded; and

WHEREAS, the New York City Construction Codes provides that DOB may reasonably rely on the representations made by licensed design professionals (such as architects and engineers) during the application process, though DOB may investigate further when faced with complaints filed or other contradictory evidence comes to light; and

MINUTES

WHEREAS, with respect to the City’s brief in the *Sievers* Case and the *Mazza & Avena* Case, appellant does not explain their relevance in this appeal when it is undisputed that an enormous sign hawking cigarettes (rather than, for instance, gasoline sales) would have no relation to a small automotive service station and would not be “clearly incidental” to an automotive service station; and

WHEREAS, here, in contrast, the Zerega Sign advertised for Philip Morris, which carried out its business operations in “office space” and storage “for sales and storage of cigarettes” at the subject site, and accordingly was “clearly incidental” to a principal use at the subject site—as DOB found based on contemporaneous evidence through its review at the time; and

E. Parties’ Positions

WHEREAS, in reaching its decision set forth herein, the Board has considered all of the parties’ arguments on appeal, including those put forth by appellant and DOB, but ultimately finds appellant’s arguments unpersuasive; and

Appellant’s Position

WHEREAS, the Board has considered all of appellant’s arguments on appeal but finds them ultimately unpersuasive in light of the foregoing; and

June 7, 2018

WHEREAS, appellant asserts that, in the 2368 Case, the Board denied sign registration to two signs erected in 1999 that had been used as accessory signs for the sole building tenant, Tommy Hilfiger U.S.A., Inc; and (the “2368 Tenant”).

WHEREAS, appellant states that the appellant had argued that the 2368 maintained a lease for all of the space inside the premises for storage purposes, rendering two sign permits lawful as authorizing accessory signs; and

WHEREAS, appellant states that DOB refused to register the signs as accessory uses, instead finding that the appellant leased failed to demonstrate that the two signs were not advertising signs.

WHEREAS, appellant states that, in the 2368 Case, the Board identified two criteria for differentiating advertising and accessory signs: whether the principal use to which a sign is accessory is a “bona fide” commercial use and whether the sign directs attention to the principal use of the zoning lot; and

WHEREAS, appellant asserts that, because of the 2368 Case, the Zerega Sign is an advertising sign; and

WHEREAS, first, appellant states that the Zerega Sign is an advertising sign because it is not related to any principal use at the subject site, given that the Owner leased less than 3 percent of the building’s floor space to Philip Morris for storage; and

WHEREAS, appellant states that the record indicates that there were instances where Allied Outdoor, which controlled the Zerega Sign, paid rent on behalf of Phillip Morris, that the Owner’s invoices for the space lease were sent to Phillip Morris care of Allied Outdoor’s corporate office, and that the space lease has a termination date concurrent with the sign lease; and

WHEREAS, appellant states that it is “not possible” to determine the amount of revenue Phillip Morris received because of the space lease but notes that the space lease indicates Phillip Morris paid \$24,000 per year while Philip Morris paid Allied Outdoor \$90,000–\$113,718 per year, indicating that the advertising sign was itself a principal use; and

WHEREAS, second, appellant states that the Zerega Sign did not direct attention to the subject site because, assuming Phillip Morris actually used the storage space, the Zerega Sign contained no copy relating the on-site storage with the sale of cigarettes to customers because customers could not purchase cigarettes at the subject site; and

November 27, 2018

WHEREAS, first, appellant states that OPPN 10/99 is not a valid distinction between this appeal and the 2368 Case; and

WHEREAS, appellant states that, because the 2368 Case predates OPPN 10/99, the Board improperly applied OPPN 10/99 to the 2368 Sign; and

WHEREAS, appellant also submits that DOB’s “official policy” on accessory signs has consistently refused to recognize “sham” accessory signs, reflect as far back as a 1996, where the Board determined that a sign advertising cigarettes was not accessory to any on-site principal use in *BSA Cal. No. 46-96-A*, which was upheld in *Mazza & Avena, Inc. v. Chin*, 261 A.D.2d 546 (2d Dep’t 1999); and

WHEREAS, second, appellant argues that “there is no basis for treating a permit application as a functional equivalent of the requirement in ZR § 52-61,” which pertains to “the discontinuance of a nonconforming use; and

WHEREAS, in support of this argument, appellant points to DOB determinations where DOB has allegedly disregarded accessory permits in allowing sign registrations for advertising signs at 21-09 Borden Avenue, Queens, and 93-30 Van Wyck Expressway, Brooklyn; and

WHEREAS, appellant presents no authority for the proposition that the Board—as an appellate body—is bound to follow any DOB determination, cf. ZR § 72-11 (recognizing de novo standard of review in interpretive appeals); and

February 27, 2019

WHEREAS, first, appellant states that “DOB’s argument that inaccurate permit applications be given precedence in the face of overwhelming contradicting facts is nonsensical;” and

WHEREAS, appellant notes that “the accessory permit applications indicated a display for Metro-Self Storage, Inc. (the owner of the building) but only later (in a separate section) clarifies that the actual purported accessory use was conducted by Phillip Morris;” and

WHEREAS, second, appellant dismisses “DOB’s attempts to distinguish the signs at 23-09 Borden Avenue and 93-30 Van Wyck Expressway undermine its argument regarding the evidentiary value of obtaining a permit;” and

WHEREAS, third, appellant submits that there are “clear distinctions” between the Zerega Sign and the 330

MINUTES

Bruckner Sign, namely that the 330 Bruckner Sign was related to the owner of the storage facility (N.Y. Bus Service) but that the Zerega Sign is related to a tenant (Phillip Morris); and

WHEREAS, appellant presents no authority for the proposition that ownership is a proper zoning purpose; and

WHEREAS, fourth, appellant states that “DOB materially misrepresents” the 2368 Case because appellant asserts that “the actual BSA finding in the 2368 Case was that even if the premises were used as a warehouse it would not have provided an adequate nexus for the accessory sign use;” and

May 29, 2019

WHEREAS, first, appellant states that there is “evidence that Philip Morris did not utilize the storage unit at the premises for business purposes” in the form of a 1991 map of Philip Morris warehouses that does not list the subject site and Philip Morris warehouse requirements that storage at the subject site would not meet; and

WHEREAS, second, appellant states that “a tiny warehouse space occupying a miniscule fraction of a building [cannot] qualify as a lot’s ‘principal use’” because, similar to 45-96-A, where 5 percent of lot area was insufficient to justify a principal use, any purported principal use at the subject site would constitute less than 5 percent of subject building’s floor area and would be similarly insufficient; and

WHEREAS, third, appellant states that the 2000 CPC Report “do not represent an accurate description of the law, but rather, are a description of the prevailing attitudes of various industry insiders”—rendering them “inconsequential to the central question of whether the [Zerega] Sign ever constituted a valid accessory sign pursuant to the Zoning Resolution;” and

WHEREAS, fourth, appellant states that the Board “made no effort during the hearing process to harmonize the facts of this case with prior DOB and BSA decisions;” and

WHEREAS, fifth, appellant states that, in the 2368 Case, “the Board identified two primary criteria for differentiating advertising and accessory signs: (a) that the principal use to which the sign is accessory is a bona fide business use or that the actual or anticipated revenue generated by the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign or (b) that based on the definitions found in section 12-10 of the zoning resolution, the sign directs attention to the purported principal use of the zoning lot;” and

WHEREAS, appellant states that, using this analysis, the Zerega Sign was never an accessory use because the Zerega Sign “was not related to a bona fide business” when an outdoor advertising company, “which had control of the [Zerega] Sign, made the lease payments on behalf of Philip Morris” and the Zerega Sign “contain[ed] no copy that would direct attention to the premises;” and

June 5, 2019

WHEREAS, first, appellant asserts that the 2368 Case is “directly parallel to the case of the Subject Sign;” and

WHEREAS, second, appellant states that DOB fails to distinguish sign registrations at for the following locations: 50-01 Queens Boulevard, Queens; 58-58 Laurel Hill Boulevard, Queens; 370 Hamilton Avenue, Brooklyn; 217 East 17th Houston, Manhattan; 30 Prince Street, Brooklyn; and 40 Flatbush Avenue Extension, Brooklyn; and

WHEREAS, appellant still presents no authority for the proposition that the Board—as an appellate body—is bound to follow any DOB determination, cf. ZR § 72-11 (recognizing de novo standard of review in interpretive appeals); and

DOB’s Position

February 6, 2019

WHEREAS, first, DOB states that, under the TPPN, approved alteration applications have significant probative value in determining whether a sign constitutes a non-conforming use; and

WHEREAS, here, DOB states that, in 1987, DOB approved and issued permits for “accessory business roof signs and a roof structure on which to place them,” but there is no DOB record indicating approval for any advertising sign on the roof of the subject site; and

WHEREAS, DOB states that, because the TPPN considers “records of documentation from any City Agency” the best form of evidence, the approved alteration applications and permits demonstrate that Zerega Sign constituted an accessory use in 1987; and

WHEREAS, DOB also notes that the 1987 Certificate of Occupancy indicates “offices and storage”—thereby corroborating that the Zerega Sign was related to the on-site principal storage use, which is also reflected in the space lease; and

WHEREAS, second, DOB states that this interpretive appeal is distinguishable from the 2368 Case and overcomes any rebuttable presumption that a large sign at a warehouse constitutes off-site advertising; and

WHEREAS, DOB notes that the OPPN 10/99 was not in effect when DOB issued the sign permits, that any “presumption that a sign is advertising at a warehouse does not overcome the presumption that a sign is accessory” when DOB has issued a permit authorizing an accessory sign, and that the facts here overcome any presumption of advertising set forth in OPPN 10/99; and

WHEREAS, DOB states that this appeal is strikingly similar to the 330 Bruckner Case, where the Board upheld DOB’s sign-registration denial to a sign that had an alteration application approved after “a full plan examination, including a rigorous fact-finding inquiry on the issue of the principal use of the Premises,” and issued a permit to legalize an accessory sign in 1981, which constituted evidence that the 330 Brucker Sign was related to the on-site principal storage use and demonstrated that any advertising use had been discontinued for more than two years; and

WHEREAS, DOB contrasts this appeal with the 2368 Case, where evidence in the record indicated that the warehouse at issue was not a legitimate principal use

MINUTES

including the firsthand inspection and personal knowledge of the Board's commissioners who found the site "consist[ed] largely of empty space" with "a small amount of 'promotional material,'" which was corroborated by a dearth of "objective, independently verifiable evidence of warehouse operations" or evidence that revenue generated by the 2368 Sign was "clearly incidental to revenue generated from the use on the zoning lot to which it directs attention;" and

WHEREAS, here, DOB submits that the approved applications and permits for the Zerega Sign and the 330 Bruckner Sign both reflect administrative determinations that the signs were lawful accessory uses with incidental relationships to on-site principal uses; and

WHEREAS, third, DOB notes that its sign-registration denial for the Zerega Sign is consistent with its registration of an advertising sign at 21-09 Borden Avenue (where an accessory sign had never been installed) and an advertising sign at 93-30 Van Wyck Expressway (where 1987 permits for "legalizing advertising roof sign" had more probative value than 1971 applications for accessory business signs); and

May 29, 2019

WHEREAS, first, DOB submits that its determination "that the [Zerega] Sign was accessory for a continuous period of two or more years and that any non-conforming advertising use was discontinued is based on substantial evidence that distinguishes the [Zerega] Sign from the advertising signs at 2368 12th Avenue, Manhattan;" and

WHEREAS, DOB notes that DOB records "demonstrate that the [Zerega] Sign is accessory to a business at the premises;" and

WHEREAS, for instance, the 1986 Sign Application indicates that DOB approved accessory business sign permits for Metro Self Storage that would read "Metro Self Storage;" and

WHEREAS, DOB states that subsequent accessory sign applications were to "[r]epaint existing sign on existing structure" in 1990 and "[t]o legalize the face of the existing sign;" and

WHEREAS, the 1990 sign application includes a form that states: "Request approval of application of business sign as per rental payments of attached. This is a five story structure with the Philip Morris Marlboro business occupying the first floor of the building. They have office space and storage for sales and distribution of cigarettes;" and

WHEREAS, written on the 1990 sign application, there is a handwritten notation that states: "O.K. to consider as business sign [signature] 6/11/90;" and

WHEREAS, next, DOB notes that the "lease and rental agreements provided by appellant demonstrate that the [Zerega] Sign at the premises from 1988-1996 was accessory" based on storage-space rent that exceeds the cost of maintaining the Zerega Sign by 240 percent, consistent with OPPN 10/99, as well as the identification panel for Philip Morris placed at the main entrance of the subject site;

and

WHEREAS, second, DOB states that "appellant's examples demonstrate the Department's consistent practice in assessing whether a sign is legally non-conforming and whether it should be advertising or accessory" and sets forth its reasons for sign-registration determinations at 40 Flatbush Avenue Extension, Brooklyn; 50-01 Queens Boulevard, Queens, 58-58 Laurel Hills Boulevard, Queens; 370 East Houston Street, Manhattan; and 30 Prince Street, Brooklyn; and

WHEREAS, third, DOB states that a determination that the Zerega Sign "was accessory, and not non-conforming advertising, is consistent with the Department and the Board's determination in 330 Bruckner Boulevard" because both signs were discontinued after the respective applicants submitted applications for accessory business signs related to storage facilities and were issued accessory-sign permits by DOB after "a rigorous fact-finding inquiry;" and

WHEREAS, fourth, DOB explains that "legalization" of nonconforming uses requires showing that the use was lawfully established and continuous pursuant to the Zoning Resolution as well as obtain a permit in accordance with the Administrative Code, paying any associated penalties before a permit will issue; and

June 5, 2019

WHEREAS, first, DOB states that 25 pieces of evidence submitted by appellant do not address "whether any non-conforming advertising use was discontinued for a period of more than two years;" and

WHEREAS, specifically, DOB states that the "1980 Tax photograph (circa 1983) and analysis" perhaps shows a sign structure but without any indication that the structure was used for an advertising sign and that the photo is from a collection "from 1983 to 1988;" and

WHEREAS, DOB also notes that the "1994 Electrical Application Y063803" for "connection of sign" is probative with respect to the presence of a sign but contains no information that would support that the referenced sign was used for off-site advertising; and

WHEREAS, DOB submits that "DOB Permit 201143253" from 2008 provides no information about whether the referenced sign was used for off-site advertising; and

WHEREAS, second, DOB notes that "appellant's evidence does not refute the Department's conclusion that Philip Morris maintained a business presence at the premises beginning in 1988 sufficient to support an accessory sign;" and

WHEREAS, DOB refutes that a 1991 map of Philip Morris warehouses or a 1999 Philip Morris warehouse-survey questionnaire indicate that the subject site was not used for a warehouse by Philip Morris; and

WHEREAS, DOB instead points to the 1990 sign application to "repaint existing [1987 accessory business] sign," which states that "Philip Morris Marlboro business [is] occupying the first floor of the building" at the subject site,

MINUTES

where “[t]hey have office space and storage for sales and distribution of cigarettes”—indicating that Philip Morris maintained a principal use at the subject site; and

WHEREAS, third, DOB states that the “applicant’s accessory sign application rebut any claim that the sign at the premises continued as advertising” because, unlike in the 2368 Case, the “prior applicant’s statements were reviewed and accepted by the Department at the time in support of the accessory sign permits;” and

WHEREAS, fourth, DOB submits that its “review and determination of applications for registration as a non-conforming advertising sign is fact-based,” so DOB has been consistent with its past precedents with respect to sign registrations; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments on appeal but finds them ultimately unpersuasive; and

WHEREAS, based on the foregoing, the Board finds that appellant has failed to demonstrate that the Zerega Sign has been continuously used for advertising purposes.

Therefore, it is Resolved, that the decision of the Department of Buildings shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, June 25, 2019.

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barone Properties, Inc., owner.

SUBJECT – Application July 7, 2016 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance and extension of term for the continued operation of retail and office use (UG 6) which expired on June 1, 2014; Amendment of the configuration of accessory parking lot. Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, Block 5512, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

171-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Lacher/Koeppel Realty Corp., owner.

SUBJECT – Application November 6, 2017 – Extension of Term of a previously approved (§72-21) which permitted the legalization of an existing auto storage facility and the parking of twenty-four (24) cars on the vacant portion of the site which expired on November 22, 2014; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 32-45 75th Street, Block 1171, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

197-02-BZ

APPLICANT – Eric Palatnik, P.C., for Nostrand Kings Management, LLC, owner.

SUBJECT – Application January 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Harbor Fitness) which expired on November 26, 2017; Waiver of the Board’s Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application January 3, 2017 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use contrary to underlying use regulations which expired on December 4, 2016. M2-1 zoning district.

PREMISES AFFECTED – 109-09 15th Avenue, Block 4044, Lot 60, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

MINUTES

183-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1400 Retail Owner LLC, owner; TSI West 115th Street LLC dba New York Sports Club, lessee.

SUBJECT – Application January 29, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building which expired on November 1, 2018; Amendment to permit a change in the hours of operation; Waiver of the Board Rules. C4-5X zoning district.

PREMISES AFFECTED – 1400 Fifth Avenue, Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

167-14-A

APPLICANT – Eric Palatnik, P.C., for 250 Manhattan LLC, owner.

SUBJECT – Application March 22, 2019 – Extension of Time to Complete Construction of a six-story mixed residential and commercial building un the prior C4-3/R6 zoning regulation approved pursuant to common law doctrine of vested rights which will expire on June 2, 2019.

PREMISES AFFECTED – 250 Manhattan Avenue, Block 2782, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for extensions of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 25, 2019, after due notice by publication in *The City Record*, and then to decision on June 25, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Manhattan Avenue, between Powers Street and Grand Street, in an R6B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along Manhattan Avenue, 100 feet of depth, 2,500 square feet of lot area and is occupied by a building under construction; and

WHEREAS, on April 18, 2008, the Department of Buildings (“DOB”) issued New Building Permit No. 310058950-01-NB (the “New Building Permit”), authorizing construction of a six-story mixed-use residential and commercial building with 7,613 square feet of floor area (3.05 FAR)—5,483 square feet of residential floor area (2.2 FAR) and 2,130 square feet of commercial floor area (0.85 FAR)—with eight dwelling units and no accessory parking spaces; and

WHEREAS, on July 29, 2009, the City Council voted to adopt the Greenpoint–Williamsburg Contextual Rezoning, which rezoned the subject site from a C4-3 (R6 equivalent) zoning district to an R6B zoning district and rendered the subject building non-compliant with respect to residential floor area, commercial floor area, maximum building height, maximum wall height and maximum number of dwelling units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 2015, when, under the subject

MINUTES

calendar number, the Board granted an application pursuant to the common law doctrine of vested rights and reinstated the New Building Permit, with related work permits necessary to complete construction and obtain a certificate of occupancy, for four (4) years, expiring June 2, 2019; and

WHEREAS, the time to complete construction having expired, the applicant now seeks extensions of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant submits that, since 2015, construction has been delayed by funding issues but contends that substantial expenditures and substantial progress have been made toward completion of the subject building; and

WHEREAS, in response to questions from the Board at hearing, the applicant submitted an updated field report, indicating that approximately 58 percent of construction has been completed and anticipating completion in October 2019; and

WHEREAS, in particular, the field report indicates that the following work is complete: substantially all of the concrete masonry unit block walls from the first story to the roof level; installation of part of the brick facades; installation of metal C-joists and decking with concrete slabs poured; installation of fire stairs and railing with concrete treads and stair decking; installation of interior metal framing; and plumbing, sprinkler, HVAC rough-ins and electrical work from the third floor to the fifth floor; and

WHEREAS, the field report also demonstrates that the following work remains: installation of utilities from the street to the subject building; completion of the brick facades; installation of a second staircase to the cellar; framing for the roof bulkhead; the remainder of the plumbing, sprinkler, HVAC rough-ins and electrical work; trenching for under-slab plumbing in the cellar; and removal of soil for under-slab work to commence; and

WHEREAS, with respect to expenditures, the field report states that, to date, approximately \$1,435,317 has been expended with approximately \$1,101,466 remaining to complete the work; and

WHEREAS, accordingly, the applicant submits that, because of the further expenditures incurred and the additional work completed that would have to be removed at significant expense, it would suffer a serious loss if the site were required to comply with R6B zoning regulations; and

WHEREAS, at hearing, the Board expressed concern with the slow progress of construction, specifically with respect to increasing delays, noting that the updated field report shows a delay of four (4) months; and

WHEREAS, the Board notes that it does not look favorably on stalled construction where, after years, there is no indication that the work will ever be completed; and

WHEREAS, the Board further notes that, under the common law, there may be instances in which circumstances may have changed such that the City's interest in present zoning outweighs the property owner's vested right, including abandonment where the intent to abandon and an

overt act—or some failure to act—imply that the owner neither claims nor retains any interest in the subject matter of the abandonment, *see Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15 (2d Dept. 1976); and

WHEREAS, based upon its review of the record and inspection of the site and surrounding area, the Board has determined that the requested extension of time to complete construction is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated June 2, 2015, so that as amended this portion of the resolution shall read: “to *reinstate* New Building Permit No. 310058950-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four (4) years, expiring June 2, 2023.”

Adopted by the Board of Standards and Appeals, June 25, 2019.

2017-285-AII

APPLICANT – NYC Board of Standards and Appeals.
SUBJECT – Application March 14, 2019 – Motion to review decision; remand.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Resolution reviewed, revised and re-issued.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-

Brown, Commissioner Sheta and Commissioner Scibetta....4

Negative:.....0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, at a public hearing on June 25, 2019, the Board made a motion, for good cause, pursuant to § 1-12.6 of the Board's Rules of Practice and Procedure, to review its decision in the subject calendar number, dated July 17, 2018, issued September 7, 2018 (the “Resolution”); and

WHEREAS, the Board provided notice of the hearing to review the Resolution to the respective representatives of the following: the Committee for Environmentally Sound Development (“Appellant”); the New York City Department of Buildings (“DOB”); the New York City Planning Commission; Amsterdam Avenue Redevelopment Associates, LLC (the “Owner”) c/o SJP Residential Properties; and 170 West End Avenue Condominium (the “Condominium”); and

WHEREAS, the Board moved to review the Resolution after Supreme Court of the State of New York vacated the Resolution and remanded to the Board for further consideration in light of *The Committee for Environmentally Sound Development v. Amsterdam Avenue Redevelopment Associates LLC*, No. 153819/2018 (March

MINUTES

14, 2019); and

WHEREAS, at hearing, the Board discussed ways in which the Resolution could be amended to more specifically describe the Board's determination; and

WHEREAS, the Resolution has been reviewed, revised accordingly and re-issued separately from this decision.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution issued under BSA Calendar Number 2017-285-A, dated July 17, 2018, as revised June 25, 2019.

Adopted by the Board of Standards and Appeal, June 25, 2019.

2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – Application pursuant to Section 666.7(a) of the New York City Charter and Section 1-06 of the Board of Standards and Appeals (the “Board” or “BSA”) Rules of Practice and Procedure, to request that the Board revoke building permit No. 122887224-01-NB (the “Permit”), issued by the New York City Department of Buildings (“DOB”) on September 27, 2017. The application seeks to demonstrate that the permit is not a validly issued building permit because the purported “zoning lot” of which the Development Site is purported to be a part, does not comply with the requirements of the definition of a zoning lot in Zoning Resolution Section 12-10.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

I. ZONING LOT:

Affirmative: Commissioner Ottley-Brown.....1

Negative: Vice Chair Chanda, Commissioner Sheta and Commissioner Scibetta.....3

Rescused: Chair Perlmutter.....1

II. OPEN SPACE:

Affirmative:.....0

Negative: Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....4

Rescused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the building permit issued by the Department of Buildings (“DOB”) on September 27, 2017, under New Building Application No. 122887224 (the “Permit”), authorizes construction of a 55-story residential and community-facility building with 112 dwelling units and a total height of 668 feet (the “New Building”) by Amsterdam Avenue Redevelopment Associates, LLC (the “Owner”) on a development site with 110,794 square feet of

lot area (the “Development Site”); and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought on behalf of the Committee for Environmentally Sound Development (“Appellant”), alleging errors in the Permit pertaining to (i) whether the Development Site complies with the Zoning Resolution’s “zoning lot” definition and (ii) whether ground-level open areas on the Development Site comply with the Zoning Resolution’s “open space” regulations; and

WHEREAS, for the reasons that follow, a majority of the Board denies this appeal; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2018, and then to decision on July 17, 2018; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, submitted testimony in support of this appeal, stating that the New Building is inappropriate and out of context with the surrounding neighborhood, that no rational person could view the Development Site as a single lot and that a significant portion of the open space claimed is unavailable to the public; and

WHEREAS, 170 West End Avenue Condominium (the “Condominium”), a residential condominium located on the subject block outside the bounds of the Development Site and represented by counsel in this appeal, states that it takes no position with respect to the issues presented in this appeal insofar as they do not implicate the Condominium’s accessory parking and that 26 off-street parking spaces located behind the New Building are lawful and permitted under the Zoning Resolution; and

WHEREAS, New York State Assemblymember Richard N. Gottfried and State Senator Brad Hoylman submitted testimony in support of this appeal, stating that the project fails to comply with the “zoning lot” definition because it is not comprised of whole tax lots and fails to comply with applicable “open space” regulations and that these compliance failures are an abuse of zoning regulations that render the New Building contextually out of scale; and

WHEREAS, New York State Assemblymember Linda B. Rosenthal, State Senator Brad Holyman and Comptroller Scott M. Stringer submitted testimony in support of this appeal, stating that creative interpretations of the Zoning Resolution slowly chip away at the quality of life and character of the City’s residential areas; and

WHEREAS, a majority of the New York City Council submitted testimony in support of this appeal, stating that divorcing zoning lots from the tax lots on a block makes ensuring compliance with the Zoning Resolution dramatically more difficult and that having zoning lot lines coincide with tax lot lines promotes clarity and transparency; and

MINUTES

WHEREAS, New York City Comptroller Scott M. Stringer submitted testimony in support of this appeal, stating that the Owner creatively interpreted the City's zoning regulations to create a tower on the Upper West Side by merging various tax lots to create one zoning lot and by claiming the neighboring property's open space as its own and that the City must do more to prevent the construction of inappropriately sited towers throughout the City and ensure that all development complies with the intent and letter of the law; and

WHEREAS, Manhattan Borough President Gale A. Brewer submitted testimony in support of this appeal, stating that interpreting the Zoning Resolution in such a way as to allow for the New Building is a mistake, makes for bad public policy and goes against the spirit and intent of the Zoning Resolution; and

WHEREAS, New York City Council Member Helen Rosenthal submitted testimony in support of this appeal, stating that the Development Site runs counter to the most logical interpretation of the text of the Zoning Resolution in an unprecedented manner, that divorcing zoning lots from tax lot lines would make ensuring compliance with the Zoning Resolution dramatically more difficult and that the Development Site inappropriately counts inaccessible and unusable area as open space; and

WHEREAS, the American Institute of Architects New York Chapter submitted testimony in opposition to this appeal, stating that professionals that work on buildings, such as architects, need a predictable set of zoning rules in order to design and program buildings and that as-of-right zoning affords architects and their clients that predictability; and

WHEREAS, the Municipal Art Society of New York submitted testimony in support of this appeal, stating that the Development Site does not comply with the "zoning lot" definition because it contains two entire tax lots and small portions of four tax lots; and

WHEREAS, the Real Estate Board of New York submitted testimony in opposition to this appeal, stating that the City's as-of-right framework embodied in the Zoning Resolution is meant to encourage predictability in an industry where financing needs predictability, especially when market conditions can be unpredictable, that the Permit was only granted after an exhaustive DOB review, including a rigorous audit, and that this appeal is based on a faulty interpretation of the Zoning Resolution; and

WHEREAS, the New York Building Congress submitted testimony in opposition to this appeal, stating that granting this appeal would be unprecedented and clearly stifle current and future investment, that the process for reviewing and approving the Permit was transparent and consistent with the City's procedures and that two other buildings have been permitted to be built as-of-right on the same lot: 170 Amsterdam and 180 Amsterdam; and

WHEREAS, Landmark West! submitted testimony in support of this appeal, stating that the Permit is invalid because allowing the merger of portions of tax lots in order

to take advantage of certain development rights relating to the merged lots is erroneous; and

WHEREAS, a practicing architect and planner submitted testimony in opposition to this appeal, stating that the Zoning Resolution regulates the real-estate industry in accordance with the City's public and planning policies, that the key to its success has been the ability it gives owners and builders to proceed with as-of-right development, that the Department of City Planning invests substantial resources in evaluating and updating the Zoning Resolution both to reflect its evolving planning goals for the City and to correct errors and inconsistencies in the text and that City Planning takes action to legislatively clarify or amend the text when it disagrees with an interpretation; and

WHEREAS, PNC Real Estate submitted testimony in opposition to this appeal, stating that zoning lot mergers have been considered "as of right" actions and that ensuring that the decisions of city government not be reversed is important to the lending and investment communities; and

WHEREAS, Association for a Better New York submitted testimony in opposition to this appeal, stating that upholding the Permit ensures a measure of predictability and confidence in the issuance of as-of-right building permits and that there is a consistent history of allowing partial zoning lot mergers; and

WHEREAS, the Sierra Club New York City Group submitted testimony in support of this appeal, stating that the Development Site does not comply with applicable "open space" requirements; and

WHEREAS, the West 68th Street Block Association Inc. submitted testimony in support of this appeal, stating that the New Building will have negative impacts on light, air, infrastructure and other quality-of-life necessities in the community; and

WHEREAS, West End Preservation Society submitted testimony in support of this appeal, stating that the Development Site does not comply with the "zoning lot" definition because it consists of portions of tax lots; and

WHEREAS, a planner submitted testimony in support of this appeal, stating that zoning lots are composed of one or more tax lots and that there is insufficient data on zoning lots; and

WHEREAS, the Board also received letters and heard testimony from neighbors, organizations and concerned members of the public in support of and in opposition to this appeal; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject block is bounded by Amsterdam Avenue, West 66th Street, West End Avenue and West 70th Street; and

WHEREAS, the subject block includes five buildings located at 140 West End Avenue, 150 West End Avenue, 160 West End Avenue, 170 West End Avenue and 180 West End Avenue (the "1960s Buildings") that were developed on a single parcel of land in the 1960s (the "Original Parcel"); and

WHEREAS, with DOB's review and approval of

MINUTES

zoning compliance, said parcel of land was subdivided in April 1987 into two separate parcels that included partial tax lots: one improved with the 1960s Buildings and one unimproved (the “Unimproved Parcel”); and

WHEREAS, DOB issued certificates of occupancy to all the 1960s Buildings to reflect said subdivision that resulted in an improved parcel that included partial tax lots: DOB issued 140 West End Avenue a certificate of occupancy in 1989 and subsequently issued two certificates of occupancy; DOB issued 150 West End Avenue a certificate of occupancy in 1989 and subsequently issued six subsequent certificates of occupancy; DOB issued 160 West End Avenue a certificate of occupancy in 1990 and subsequently issued four certificates of occupancy; DOB issued 170 West End Avenue a certificate of occupancy in 1991 and subsequently issued three certificates of occupancy; and DOB issued 180 West End Avenue a certificate of occupancy in 1988 and subsequently issued four certificates of occupancy; and

WHEREAS, the 1960s Buildings’ certificates of occupancy certify compliance with the Zoning Resolution and are binding and conclusive upon DOB as to all matters set forth therein—namely, that subdivision of the Original Parcel into two separate parcels that include partial tax lots complies with applicable zoning requirements—unless set aside, *see* New York City Charter § 645(3); and

WHEREAS, the Unimproved Parcel was merged in May 1987 with adjacent land parcels located at 162 Amsterdam Avenue, 170 Amsterdam Avenue and 200 West End Avenue, forming a larger parcel that was again enlarged in 2007 with land located at 200 Amsterdam Avenue to form a combined land parcel that included partial tax lots (the “Combined Land Parcel”); and

WHEREAS, DOB issued 170 Amsterdam Avenue a certificate of occupancy in 1987 reflecting the inclusion of partial tax lots and, after its rebuilding, issued a certificate of occupancy in 2018 during the pendency of this appeal; and

WHEREAS, DOB issued 200 West End Avenue a certificate of occupancy in 2011 reflecting the inclusion of partial tax lots; and

WHEREAS, DOB issued 180 Amsterdam Avenue a certificate of occupancy in 2017 reflecting the inclusion of partial tax lots; and

WHEREAS, 170 Amsterdam Avenue, 200 West End Avenue and 180 Amsterdam Avenue’s certificates of occupancy certify compliance with the Zoning Resolution and are binding and conclusive upon DOB as to all matters set forth therein—namely, that their parcels of land that include partial tax lots comply with applicable zoning requirements—unless set aside, *see* New York City Charter § 645(3); and

WHEREAS, in sum, DOB has issued 28 binding-and-conclusive certificates of occupancy to buildings on the subject block certifying that parcels of land that include partial tax lots comply with applicable zoning requirements; and

WHEREAS, in 2015, the Combined Land Parcel was

subdivided to form two separate land parcels, the first of which (occupied by 162 Amsterdam Avenue, 170 Amsterdam Avenue and 180 Amsterdam Avenue) was entitled “Zoning Lot 1” by the Declaration with Respect to Subdivision of Zoning Lot, City Register File No. 2015000209093, dated as of June 11, 2015 (the “Zoning Lot Declaration”); and

WHEREAS, the second land parcel, entitled “Zoning Lot 2” by the Zoning Lot Declaration, is the subject of this appeal: the Development Site; and

WHEREAS, the Development Site is located on the west side of Amsterdam Avenue, between West 70th Street and West 66th Street, partially in an R8 (C2-5) zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the Development Site has approximately 110,794 square feet of lot area, 153 feet of frontage along Amsterdam Avenue, 224 feet of frontage along West End Avenue, 100 feet of frontage along West 70th Street, 800 feet of depth and is improved with an existing 27-story building at 200 West End Avenue with work begun on the New Building at 200 Amsterdam Avenue; and

WHEREAS, the Development Site includes land within the tax-lot boundaries of 150 West End Avenue, 160 West End Avenue, 170 West End Avenue, 180 West End Avenue, 200 West End Avenue and 200 Amsterdam Avenue; and

WHEREAS, on September 27, 2017, DOB issued the Permit to allow construction of the New Building on the Development Site at 200 Amsterdam Avenue in accordance with the DOB-approved plans (the “Plans”), and Appellant commenced this appeal on October 27, 2017; and

WHEREAS, on September 7, 2018, the Board issued the original resolution for this appeal; and

WHEREAS, on March 14, 2019, in *The Committee for Environmentally Sound Development v. Amsterdam Avenue Redevelopment Associates LLC*, No. 153819/2018, the Supreme Court of the State of New York vacated the Board’s original resolution and remanded to the Board for further consideration; and

ZONING PROVISIONS

WHEREAS, ZR § 12-10 (italicized words in original to indicate defined terms) defines a “zoning lot” as follows:

A “zoning lot” is either:

- (a) a lot of record existing on December 15, 1961 or any applicable subsequent amendment thereto;
- (b) a tract of land, either unsubdivided or consisting of two or more contiguous lots of record, located within a single *block*, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in single ownership;
- (c) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single *block*, which at the

MINUTES

time of filing for a building permit (or, if no building permit is required, at the time of the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein); or

- (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single *block*, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy) is declared to be a tract of land to be treated as one *zoning lot* for the purpose of this Resolution. Such declaration shall be made in one written Declaration of Restrictions covering all of such tract of land or in separate written Declarations of Restrictions covering parts of such tract of land and which in the aggregate cover the entire tract of land comprising the *zoning lot*. Any Declaration of Restrictions or Declarations of Restrictions which individually or collectively cover a tract of land are referred to herein as “Declarations”. Each Declaration shall be executed by each party in interest (as defined herein) in the portion of such tract of land covered by such Declaration (excepting any such party as shall have waived its right to execute such Declaration in a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration). Each Declaration and waiver of right to execute a Declaration shall be recorded in the Conveyances Section of the Office of the City Register or, if applicable, the County Clerk’s Office of the county in which such tract of land is located, against each lot of record constituting a portion of the land covered by such Declaration.

A *zoning lot*, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York, or on any recorded subdivision plat or deed.

Parcels within City-owned tracts of land located in Broad Channel within the boundaries of Community Board 14 in the Borough of Queens that were numerically identified for leasing purposes on maps filed in the Office of Borough President prior to December 15, 1961, may be considered as individual lots of record as of September 10, 1981.

- (e) For purposes of the provisions of paragraph (c) hereof:
- (1) Prior to issuing a building permit or a

certificate of occupancy, as the case may be, the Department of Buildings shall be furnished with a certificate issued to the applicant therefor by a title insurance company licensed to do business in the State of New York showing that each party having any interest in the subject tract of land is a party in interest (as defined herein); except that where the City of New York is a fee owner, such certificate may be issued by the New York City Law Department; and

- (2) A “party in interest” in the tract of land shall include only (W) the fee owner thereof, (X) the holder of any enforceable recorded interest superior to that of the fee owner and which could result in such holder obtaining possession of all or substantially all of such tract of land, (Y) the holder of any enforceable recorded interest in all or substantially all of such tract of land which would be adversely affected by the development thereof and (Z) the holder of any unrecorded interest in all or substantially all of such tract of land which would be superior to and adversely affected by the development thereof and which would be disclosed by a physical inspection of the tract of land.
- (f) For purposes of the provisions of paragraph (d) hereof:
- (1) Prior to issuing a building permit or a certificate of occupancy, as the case may be, the Department of Buildings shall be furnished with a certificate issued to the applicant therefor by a title insurance company licensed to do business in the State of New York showing that each party in interest (excepting those parties waiving their respective rights to join therein, as set forth in this definition) has executed the Declaration and that the same, as well as each such waiver, have been duly recorded; except that where the City of New York is a fee owner, such certificate may be issued by the New York City Law Department;
- (2) The Buildings Department, in issuing a building permit for construction of a *building or other structure* on the *zoning lot* declared pursuant to paragraph (d) above or, if no building permit is required, in issuing a certificate of occupancy for such *building or other structure*, shall accept an application for same from and, if all conditions for

MINUTES

issuance of same are fulfilled, shall issue same to any party to the Declaration;

- (3) By their execution and recording of a Declaration, the parties to the Declaration, and all parties who have waived their respective rights to execute such Declaration, shall be deemed to have agreed that no breach by any party to the Declaration, or any agreement ancillary thereto, shall have any effect on the treatment of the tract of land covered by the Declaration as one *zoning lot* for purposes of this Resolution and such tract of land shall be treated as one *zoning lot* unless such *zoning lot* is subdivided in accordance with the provisions of this Resolution; and

- (4) A “party in interest” in the portion of the tract of land covered by a Declaration shall include only (W) the fee owner or owners thereof, (X) the holder of any enforceable recorded interest in all or part thereof which would be superior to the Declaration and which could result in such holder obtaining possession of any portion of such tract of land, (Y) the holder of any enforceable recorded interest in all or part thereof which would be adversely affected by the Declaration, and (Z) the holder of any unrecorded interest in all or part thereof which would be superior to and adversely affected by the Declaration and which would be disclosed by a physical inspection of the portion of the tract of land covered by the Declaration.

A *zoning lot* may be subdivided into two or more *zoning lots*, provided that all resulting *zoning lots* and all *buildings* thereon shall comply with all of the applicable provisions of this Resolution. If such *zoning lot*, however, is occupied by a *non-complying building*, such *zoning lot* may be subdivided provided such subdivision does not create a new *non-compliance* or increase the degree of *non-compliance* of such *building*.

Where ownership of a *zoning lot* or portion thereof was effected prior to the effective date of this amendment, as evidenced by an attorney’s affidavit, any *development*, *enlargement* or alteration on such *zoning lot* may be based upon such prior effected ownership as then defined in the *zoning lot* definition of Section 12-10. Such prior leasehold agreements shall be duly recorded prior to August 1, 1978.

Prior to the issuance of any permit for a *development* or *enlargement* pursuant to this

Resolution a complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraphs (a), (b), (c) and (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register (or, if applicable, the County Clerk’s Office) of the county in which the said *zoning lot* is located. The *zoning lot* definition in effect prior to the effective date of this amendment shall continue to apply to Board of Standards and Appeals approvals in effect at the effective date hereof; and

WHEREAS, ZR § 12-10 defines “open space,” in pertinent part, as follows:

“Open space” is that part of a *zoning lot*, including *courts* or *yards*, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*; and

WHEREAS, ZR § 25-64 provides, in relevant part: Restrictions on the use of open space for parking and driveways are set forth in this Section, in accordance with the provisions of Section 23-12 (Permitted Obstructions in Open Space). . . .

- (c) In R6, R7, R8, R9 and R10 Districts without a letter suffix, driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths may not use more than 50 percent of the required *open space* on any *zoning lot*. The provisions of this paragraph, (c), shall not apply to *Quality Housing buildings*; and

WHEREAS, ZR § 23-12 states, in relevant part: In the districts indicated, the following obstructions shall be permitted in any *open space* required on a *zoning lot*:

- (e) Driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths, provided that the total area occupied by all these items does not exceed the percentages set forth in Section 25-64 (Restrictions on Use of Open Space for Parking); and

ISSUES PRESENTED

WHEREAS, there are two issues¹ in this appeal: (i)

1 Appellant also requests revocation of the Permit; however, Appellant has not presented the Board with a timely, signed final determination from DOB refusing to revoke the Permit as required by the Board’s Rules of Practice and Procedure. See 2 Rules of the City of New York (“RCNY”) § 1-06.3(a). Furthermore, as discussed herein, Appellant has failed to demonstrate that the Permit violates any applicable provision of law, so the Board need not—and does not—

MINUTES

whether the Development Site complies with the Zoning Resolution's "zoning lot" definition and (ii) whether ground-level open areas on the Development Site comply with the Zoning Resolution's "open space" requirements; and

APPELLANT'S POSITION

WHEREAS, Appellant states that this appeal should be granted because the Development Site does not comply with the requirements of the "zoning lot" definition of ZR § 12-10 and because the ground-level open areas on the Development Site do not meet the "open space" definition and applicable zoning requirements under ZR §§ 12-10, 25-64 and 23-12; and

I. ZONING LOT

WHEREAS, Appellant states that the Development Site does not comply with the "zoning lot" definition because it does not consist of lots of record, meaning entire tax lots as shown on the official tax map of the City of New York; and

WHEREAS, Appellant states that paragraph (d) of the "zoning lot" definition requires that the lots to be merged by declaration into a single zoning lot must be "lots of record" and that "lot," "of record" and "lot of record" are undefined by the Zoning Resolution; and

WHEREAS, Appellant states that "lot of record" in subdivision (a) of the "zoning lot" definition means "a lot as shown on the official tax map" and that lots shown on the tax map are entire tax lots, the dimensions of which generally correspond with deeds of ownership recorded in the City Register's Office; and

WHEREAS, Appellant states that "of record" in subdivisions (b), (c) and (d) has the same meaning: tax lots shown on the official tax map; and

WHEREAS, Appellant states that the Development Site does not consist of a series of tax lots, but of disparate, isolated bits and pieces of tax lots strung together with narrow threads made up of other bits and pieces of lots; and

WHEREAS, Appellant states that portions of the various tax lots that make up the Development Site are not, themselves, "lots," as the term is used in the "zoning lot" definition; and

WHEREAS, Appellant states that the parts of the tax lots were also not "of record" prior to the creation of the Development Site and that, for something to be "of record," it must be recorded; and

WHEREAS, Appellant states that *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), identified by the Owner as supporting the Owner's position, is distinguishable from the Development Site because Breezy Point's lots were unique, were established prior to December 15, 1961, and does not stand for the proposition that a partial tax lot is a lot of record; and

WHEREAS, Appellant states that, for two or more lots to be declared a zoning lot, they must be contiguous for a minimum of 10 linear feet and they must be "lots of record"

consider revocation of the Permit in this appeal.

pursuant to paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that the Development Site does not consist of "two or more lots of record" because the phrase "two or more" necessarily indicates that fractions of tax lots are not permitted under paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that, because the Development Site is not composed of entire tax lots, it does not meet paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that the Development Site is also not an "unsubdivided" "tract of land" because an unsubdivided tract of land is a single lot of record, meaning a single tax lot; and

WHEREAS, Appellant states that the Department of City Planning's *Zoning Handbook* translates "a tract of land, either unsubdivided or consisting of two or more lots of record . . . within a single *block*" from the Zoning Resolution into "plain English" as "a tract of land comprising a single tax lot or two or more adjacent tax lots within a block"²; and

WHEREAS, Appellant concludes, therefore, that an "unsubdivided tract of land" is equivalent to a single lot of record, which is equivalent to a single tax lot; and

WHEREAS, Appellant states that the passing reference to "parts of tax lots" in a DOB Memorandum issued by Irving E. Minkin, P.E., Acting Commissioner, dated May 18, 1978 (the "Minkin Memorandum"), entered into the record by the Owner in this appeal, is unavailing because elsewhere it references "Tax Lot(s)" and states "as shown on the Tax Map of the City of New York"; and

WHEREAS, Appellant states that the phrase "parts of tax lots" does not appear in the "zoning lot" definition or anywhere else in the Zoning Resolution and that such language cannot be imported into the text by interpretation; and

WHEREAS, accordingly, Appellant states that, because the Development Site includes parts of tax lots, it is neither an "unsubdivided" "tract of land" nor does it "consist[] of two or more lots of record" and, accordingly, does not meet paragraph (d) of the "zoning lot" definition; and

II. OPEN SPACE

WHEREAS, Appellant states that ground-level open areas on the Development Site do not meet the "open space" definition and do not comply with zoning regulations for permitted obstructions; and

WHEREAS, Appellant states that the "odd bits, pieces

² The disclaimer to the *Zoning Handbook* (2011) explicitly states that it "provides a brief overview of the zoning rules and regulations of New York City and is not intended to serve as a substitute for the actual regulations which are to be found in the Zoning Resolution The City disclaims any liability for errors that may be contained herein and shall not be responsible for any damages, consequential or actual, arising out of or in connection with the use of this information."

MINUTES

and strips of open space” do not meet the “open space” definition because said areas are not “accessible to and usable by” residents of the Development Site; and

WHEREAS, Appellant states that ZR § 23-151 only provides for the quantity—not quality—of open space but that the ground-level open areas are not “usable” in any meaningful sense as the word is used in the “open space” definition, ZR § 12-10; and

WHEREAS, Appellant states that ZR § 78-52 gives indication of the intended use and purpose of required unobstructed open space by requiring that, in large-scale residential developments, “common open space” “shall include both active and passive recreation space providing a range of recreational facilities and activities” and “be landscaped”; and

WHEREAS, Appellant states that parking spaces³ and driveways that exist on the Development Site “may be presumed” to be accessory parking for occupants of residential buildings located on the same block but not within the Development Site; and

WHEREAS, Appellant states that, because the existing parking spaces are accessory to and used by persons occupying dwelling units off the Development Site, said parking spaces cannot also be used by persons occupying dwelling units on the Development Site; and

WHEREAS, Appellant states that, although generally driveways and open accessory parking spaces are permitted obstructions in required open space under ZR §§ 23-12 and 25-64, portions of the driveways and parking spaces located on the Development Site are actually accessory to residential buildings off the Development Site, contrary to the “accessory use” definition in ZR § 12-10; and

WHEREAS, accordingly, Appellant states that the Development Site’s ground-level open areas do not comply with the Zoning Resolution’s “open space” requirements; and

DOB’S POSITION

WHEREAS, DOB states that this appeal should be denied because the Development Site meets DOB’s currently-in-effect “historical interpretation” of the “zoning lot” definition of ZR § 12-10 and because the ground-level open areas on the Development Site meet the “open space” definition and applicable zoning requirements of ZR §§ 12-10, 25-64 and 23-12; and

³ Appellant also states that the existing parking spaces are not a joint facility under ZR § 25-52 that would be a permitted obstruction under ZR § 23-12. DOB states that the Plans neither reflect that accessory parking spaces are to be provided for the New Building nor propose or show existing open parking spaces on the Development Site. The Owner states that it is exploring the establishment of a joint parking facility in the rear yard area. However, the Board is only considering the issues presented as they pertain to construction authorized by the Permit pursuant to the Plans approved for the New Building, which do not propose a joint facility.

I. ZONING LOT

A. “Historical Interpretation”

WHEREAS, DOB states that the Development Site complies with DOB’s currently-in-effect “historical interpretation” of paragraph (d) of the “zoning lot” definition because it complies with the Minkin Memorandum; and

WHEREAS, DOB states that the Minkin Memorandum is currently applicable to construction applications and that the Minkin Memorandum reflects a “longstanding, plausible, and consistent” interpretation of the “zoning lot” definition; and

WHEREAS, DOB states that the Minkin Memorandum summarizes the applicability of 1977 zoning amendments, which added paragraph (d) to the “zoning lot” definition, regarding what constitutes a zoning lot, and notes that the Minkin Memorandum states that “a single zoning lot, which may consist of one or more tax lots or parts of tax lots”; and

WHEREAS, DOB states that this interpretation that a zoning lot may consist of parts of tax lots is supported by the “zoning lot” definition of ZR § 12-10, which states that a zoning lot “may or may not coincide with a lot as shown on the official tax map of the City of New York”; and

WHEREAS, DOB states that, since a zoning lot has not historically needed to coincide with a tax map, it seems that tax lots could be bifurcated by zoning lot lines; and

WHEREAS, accordingly, DOB states that, while Appellant’s proffered interpretation that zoning lots cannot include partial tax lots promotes clarity and transparency, the Development Site complies with DOB’s currently-in-effect “historical interpretation” of paragraph (d) of the “zoning lot” definition; and

B. “Current Interpretation”

WHEREAS, after issuance of the Permit and during the pendency of this appeal, DOB also declares that its 40-year-in-effect “historical interpretation” of the “zoning lot” definition—pursuant to which an untold number⁴ of permits and certificates of occupancy have been issued—is purportedly “incorrect”; and

WHEREAS, however, Appellant explicitly asserts that the Board should not consider DOB’s draft Buildings Bulletin on zoning lots or, more significantly, DOB’s “current interpretation” in this appeal:

[T]he DOB draft bulletin is not now before the Board. . . . If and when the bulletin is adopted and appeal is brought before it, the Board may then—and only then—consider DOB’s interpretation that zoning lots must consist of entire tax lots (emphasis added); and

WHEREAS, at no point in this appeal did DOB void or supersede any of its submissions to withdraw its above position on the validity of its “historical interpretation”; and

WHEREAS, in contrast to DOB’s statements and

⁴ At hearing, DOB stated it “wouldn’t know how to look for that” number.

MINUTES

positions throughout this appeal, the Minkin Memorandum was issued contemporaneously with the 1977 amendment to the “zoning lot” definition; and

WHEREAS, this closeness in time indicates the individuals drafting and reviewing the Minkin Memorandum had firsthand knowledge of the context surrounding the 1977 amendment to the “zoning lot” definition; and

WHEREAS, additionally, throughout this appeal, DOB has expressed a significant amount of uncertainty as to whether it will proceed with releasing this allegedly corrected “current interpretation” through a draft Buildings Bulletin⁵; and

WHEREAS, at hearing, the Board discussed and heard extensive testimony about the draft Buildings Bulletin; one commissioner noted that the draft Buildings Bulletin was “a very important point by DOB,” but another commissioner noted that the record did not make it “certain that they will change their position on” their interpretation of the “zoning lot” definition; and

WHEREAS, in response to concerns expressed by the Board’s commissioners about whether it was certain to go forward, DOB declined—on numerous occasions—to give a clear response, instead describing the draft Buildings Bulletin as “out there and as a draft” and “a potential interpretation” DOB “is considering”; and

WHEREAS, the Board also heard testimony about “DOB’s practice to prepare draft bulletins to get comments internally” or to solicit “limited external review”; and

WHEREAS, notably, the Board’s commissioners heard and considered testimony that the draft Buildings Bulletin “may not see the light of day”; and

WHEREAS, at hearing, DOB’s general counsel noted that the “current interpretation,” wherein zoning lots would have to align with tax-lot boundaries, would be a “fairly significant change” because, among other things, “since 1978, that has not been [DOB’s] position”; and

WHEREAS, notwithstanding the likelihood (or unlikelihood) of the issuance of the draft Buildings Bulletin, DOB states that the Minkin Memorandum is an erroneous interpretation of the “zoning lot” definition and that, because of a need to clarify the requirements for forming zoning lots, DOB is in the process of writing a Buildings Bulletin to set forth the administrative procedures and forms required to create and verify the formation of a zoning lot; and

WHEREAS, DOB states that, under its purportedly corrected “current interpretation,” the Minkin Memorandum is erroneous because the “zoning lot” definition indicates that zoning lots cannot consist of partial tax lots, because partial tax lots cannot be lots “of record,” because the evidence previously relied upon by DOB (that zoning lots can consist of partial tax lots) is erroneous and because

interpreting zoning lots to only allow tax lots in the entirety makes for good public policy by promoting clarity and transparency; and

WHEREAS, DOB states that “lots of record” refer only to complete tax lots because a Declaration of Restrictions must be recorded “against each lot of record constituting a portion of the land covered by such Declaration” under paragraph (d) of the “zoning lot” definition; and

WHEREAS, DOB states that complete tax lots are the only types of lots that a Declaration can be recorded “against”; and

WHEREAS, DOB has furnished no evidence to substantiate this proposition; and

WHEREAS, instead DOB relies on its own bare assertion that a lot of record “must” only be a complete tax lot—rather than a recorded parcel; and

WHEREAS, DOB states that the 1961 “zoning lot” definition did permit zoning lots to contain partial tax lots, though the 1977 amendment added a requirement that zoning lots may only contain entire tax lots; that this explains the Minkin Memorandum’s error; that the term “unsubdivided” refers to a single tax lot and that the “may or may not coincide” language reflects that a zoning lot may consist of two or more complete tax lots; and

WHEREAS, despite the foregoing, the Board’s commissioners considered DOB’s uncertainty about the draft Buildings Bulletin’s “see[ing] the light of day” in conjunction with DOB’s clear statements that it seeks to have the Board uphold the Permit as indication that DOB’s actual position in this appeal is that the Development Site complies with the currently-in-effect “historical interpretation” of paragraph (d) of the “zoning lot” definition and the Minkin Memorandum because, otherwise, DOB would be taking the unlawful position that the Board should uphold an invalid permit that was issued contrary to the Zoning Resolution; and

WHEREAS, insofar as DOB has represented throughout this appeal that the Permit does not comply with the “zoning lot” definition under DOB’s purportedly corrected “current interpretation,” it is unclear by what authority DOB could issue illegal building permits that purport to authorize construction contrary to law, *cf.* N.Y.C. Administrative Code § 28-105.8 (“The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other law or rule. Permits presuming to give authority to violate or cancel the provisions of this code or other law or rule shall not be valid.”); and

WHEREAS, accordingly, Appellant has advised the Board against considering DOB’s draft Buildings Bulletin or its “current interpretation,” and throughout this appeal, DOB has argued inconsistently that a zoning lot may include parts of tax lots (under DOB’s “historical interpretation”) but also that a zoning lot may not include parts of parts of tax lots (under DOB’s purportedly corrected “current interpretation”), and the Board has considered both

⁵ Discussion of the draft Buildings Bulletin was originally located in footnote four of the original version of this resolution, issued September 7, 2018. Additional discussion has been added herein to better reflect the record in this appeal.

MINUTES

arguments in reaching its determination set forth herein; and

II. OPEN SPACE

WHEREAS, DOB states that, according to the Plans, the Development Site provides the required 77,643 square feet of open space for residents of the Development Site; and

WHEREAS, DOB states that ground-level open areas comply with the “open space” definition of ZR § 12-10 because they will be “accessible to and usable by” residents of the Development Site; and

WHEREAS, DOB states that, contrary to Appellant’s analogy to the “common open space” provision of ZR § 78-52, which requires “active and passive recreation space” for large-scale residential developments, the general “open space” definition, which is applicable to the Development Site, contains no such requirement; and

WHEREAS, DOB states that Appellant’s analogies to ZR §§ 136-324 and 141-33 similarly fail because they contain specific requirements for “publicly accessible” open space and for “special” open space, which are distinct from the general definition of “open space”; and

WHEREAS, DOB states that driveways are permitted obstructions in required open space under ZR §§ 23-12 and 25-64; and

WHEREAS, DOB states that ZR § 25-64 adds the limitation that driveways and other specified permitted obstructions “may not use more than 50 percent” of the open space required; and

WHEREAS, DOB states that the Plans indicate that the Development Site’s open space contains 12.6 percent permitted obstructions, which is less than the 50 percent maximum; and

WHEREAS, DOB states that Appellant would add the word “accessory” before word “driveways” in ZR §§ 23-12 and 25-64 but that neither provision states “accessory driveways,” while providing that other obstructions (bicycle parking spaces, off-street loading berths and open off-street parking spaces) must be accessory, suggesting that driveways need not be “accessory” to qualify as permitted obstructions under ZR §§ 23-12 and 25-64; and

WHEREAS, DOB states that, according to the Plans, no accessory parking spaces are proposed for the New Building and that, to the extent parking spaces would be proposed in the rear yard of the New Building, the Plans would need to be revised to reflect their existence with their legality to be demonstrated by the Owner; and

WHEREAS, in response to questions from the Board at the first hearing regarding whether non-compliance with “open space” provisions would render the Permit invalid, DOB states that open space requirements must be satisfied at the time of permit issuance and during the final inspection prior to the issuance of a certificate of occupancy; and

WHEREAS, in response to questions from the Board at the second hearing regarding the status of the parking, DOB states that the parking in the Development Site’s open space is lawful permitted parking accessory to 170 West End Avenue because the 26 parking spaces located on the

Development Site were lawfully established prior to 1961 as accessory parking spaces serving 170 West End Avenue; and

WHEREAS, accordingly, DOB states that the Development Site’s ground-level open areas comply with applicable “open space” requirements of ZR §§ 12-10, 25-64 and 23-12; and

OWNER’S POSITION

WHEREAS, the Owner states that this appeal should be denied because the Development Site, which includes parts of tax lots, meets the “zoning lot” definition of ZR § 12-10 and because ground-level open areas on the Development Site meet the “open space” definition and applicable zoning requirements of ZR §§ 12-10, 25-64 and 23-12; and

I. ZONING LOT

WHEREAS, the Owner states that the Development Site complies with paragraph (d) of the “zoning lot” definition because it is an unsubdivided tract of land that was “declared to be a tract of land to be treated as” a single zoning lot; and

WHEREAS, the Owner states that a “lot of record” may be something other than a tax lot and that a zoning lot may be an unsubdivided portion of land that does not correspond to lots of record; and

WHEREAS, the Owner states that the City’s first zoning regulations, the Building Zone Resolution (1916), as amended through 1960, originally defined “lot” as synonymous with a development plot—any plot of land that could or would be developed—and subsequently clarified its definition to be “a parcel or plot of ground which is or may be occupied by a building and accessory buildings including the open spaces required by this resolution”; and

WHEREAS, the Owner states that the reports *Plan for Rezoning the City of New York* (Oct. 1950) by Harrison, Ballard & Allen and *Zoning New York City: A Proposal for a Zoning Resolution for the City of New York Submitted to the City Planning Commission* (Aug. 1958) by Voorhees Walker Smith & Smith evince a clear distinction between zoning lots and tax lots intended to allow real-estate developers wide latitude and flexibility in distributing bulk across a parcel of land, delineated from surrounding parcels by the boundaries of a zoning lot, not a tax lot; and

WHEREAS, the Owner states that the comprehensive amendment to the Zoning Resolution (1961) codifies this flexibility while protecting the lawful status of existing buildings and of tracts of land that would be rendered non-complying by implementation of this comprehensive amendment; and

WHEREAS, the Owner states that, in *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), as upheld in *Golia v. Srinivasan*, 95 A.D.3d 628, 630 (N.Y. App. Div. 2012), treatment by DOB and by the Board of a plot of land in the Breezy Point Cooperative as a separate zoning lot distinct from the cooperative’s larger, single tax lot indicates that a partial tax lot can be a “lot of record” as referenced in the “zoning lot” definition; and

WHEREAS, the Owner states that, as added in 1977,

MINUTES

paragraph (d) of the “zoning lot” definition allows for the complex assemblage of contiguous parcels of land to be declared a single zoning lot and does not contain any requirement that said parcels correspond to entire tax lots; and

WHEREAS, the Owner states that, as used in the “zoning lot” definition, an “unsubdivided” tract of land refers to something other than a single lot of record and something other than two or more lots of record; and

WHEREAS, the Owner states that there are few, but scant, instances where the Zoning Resolution uses the term “tax lot” and that these references generally refer to recording requirements or perform a tracking function associated with (E) designations’ environmental restrictions; and

WHEREAS, the Owner states that the Minkin Memorandum indicates that a “single zoning lot . . . may consist of one or more tax lots or parts of tax lots” and that “boundaries of such zoning lot may or may not coincide with its comprising tax lots”; and

WHEREAS, the Owner states that tax lots and zoning lots serve different purposes: tax lots are established to identify owners to whom tax bills may be sent and zoning lots are delineated for applying zoning regulations to a parcel of land; and

WHEREAS, in response to questions from the Board at the first hearing regarding the meaning of “lot of record,” the Owner states that the more reasonable meaning of “lot of record” is either its historic and common meaning as a lot that, if located within the City of New York, has been recorded in the office of the City Register or as a lot shown on DOB’s records as available for development or already developed; and

WHEREAS, the Owner states that a memorandum issued by Department of City Planning Counsel William Valletta (Dec. 28, 1987) (the “Valletta Memorandum”) shows that “lot of record” does not equate to “tax lot” and that a zoning lot may contain a partial tax lot because it takes care to use general expressions such as “constituent parts of a zoning lot” and “the lot or its other constituent” when describing a lot of record, suggesting that tax lots are not the sole unit of measurement; and

WHEREAS, in response to questions from the Board at the second hearing regarding whether paragraph (d) of the “zoning lot” definition allows for parts of “lots of record,” the Owner states that a zoning lot may be composed of both whole and partial “lots of record,” even assuming that “lot of record” means a tax lot as used in paragraph (d) of the “zoning lot” definition because an “unsubdivided” “tract of land” can include a single whole “lot of record” or a combination of whole and partial “lots of record”; and

WHEREAS, accordingly, the Owner concludes that the Development Site complies with paragraph (d) of the “zoning lot” definition; and

II. OPEN SPACE

WHEREAS, the Owner states that the Development Site provides the required amount of open space because, as

approved by DOB, the Development Site must provide a minimum of 77,642 square feet of open space, that 86,972 square feet of open space is provided by ground-level open areas and that the ground-level open areas comply with the “open space” definition of ZR § 12-10 because they will be “accessible to and usable by” residents of the Development Site; and

WHEREAS, the Owner refers to a private agreement between all parties in interest on the Development Site, which states that “all owners and permitted occupants of any buildings within the Combined Zoning Lot, a non-exclusive right of access to the Vacant Land Parcel, but only to the extent necessary for the Vacant Land Parcel to constitute ‘open space’ under the Zoning Resolution,” as evidence that occupants of the Development Site are assured access; and

WHEREAS, the Owner states that the ground-level open areas are usable, that ZR § 78-52, cited by Appellant, has no applicability to the Development Site since this provision only applies to large-scale residential developments and that there is no minimum dimension requirement applicable to the Development Site’s open space; and

WHEREAS, the Owner states that 16,157 square feet of the Development Site classified as open space (18.58 percent) is obstructed by driveways, which complies with the 50 percent maximum permitted by ZR §§ 25-64 and 23-12; and

WHEREAS, the Owner states that there are no open accessory off-street parking spaces obstructing the Development Site’s open space and that eliminating the disputed parking area (approximately 6,623 square feet) from the open space calculations would not reduce the Development Site’s open space below the 77,642 square feet required; and

WHEREAS, accordingly, the Owner states that ground-level open areas meet the “open space” definition of ZR § 12-10 and that obstructions within the Development Site’s open space are permitted under ZR §§ 25-64 and 23-12; and

DISCUSSION

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” the Zoning Resolution; and

WHEREAS, the Board has reviewed and considered—but need not follow—DOB’s interpretation of the Zoning Resolution in rendering the Board’s own decision in this appeal, and the standard of review in this appeal is *de novo*; and

WHEREAS, however, a majority of the Board finds that Appellant has failed to demonstrate that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition, and the Board unanimously finds that Appellant has failed to demonstrate that ground-level open areas on the Development Site do not comply with the Zoning Resolution’s “open space”

MINUTES

requirements; and

I. ZONING LOT

WHEREAS, a majority of the Board⁶ finds that the Development Site meets paragraph (d) of the “zoning lot” definition based upon the record in this appeal; and

WHEREAS, the Zoning Resolution sets forth varied purposes, from “regulating the density of population” to “provid[ing] freedom of architectural design, in order to encourage the development of more attractive and economic building forms,” “promot[ing] the most desirable use of land and direction of building development in accord with a well-considered plan,” “promot[ing] stability of residential development,” and “conserv[ing] the value of land and buildings,” *see* ZR § 21-00; and

WHEREAS, by structuring the “zoning lot” definition with paragraphs (a)–(d) connected by “either . . . or,” the Zoning Resolution affords substantial flexibility in defining and redefining the boundaries a “zoning lot” and specifically allows that “[a] *zoning lot* may be subdivided into two or more *zoning lots*,” ZR § 12-10; and

WHEREAS, here, strictly applying and interpreting the “zoning lot” definition turns on whether the Development Site meets paragraph (d); and

WHEREAS, at the outset, the text of paragraph (d) states in part that a zoning lot is “a tract of land, either unsubdivided or consisting of two or more lots of record”; and

WHEREAS, in other words, paragraph (d) of the “zoning lot” definition requires only that a zoning lot be an “unsubdivided” “tract of land” or a “tract of land” “consisting of two or more lots of record”; and

WHEREAS, this text provides neither definitions of the terms “tract of land,” “unsubdivided” or “lots of record” nor reference to “tax lots”; and

WHEREAS, as surface land, the Development Site is “land,” ZR § 12-10; and

WHEREAS, as discussed herein, a majority of the Board concludes that—based upon the record in this appeal—the Development Site is a “tract of land” that is “either unsubdivided or consisting of two or more lots of record” for the purposes of the Zoning Resolution when considering the text with regard to the following: (a) the location and demarcation of the land in question; (b) the purposes of delineating the land in question; (c) the assemblage and constituents of the land in question; (d) the evidence in the record; and (e) the position presented by a minority of the Board; and

A. Location and Demarcation

WHEREAS, the following pertinent part of the “zoning lot” definition relates to the location and

demarcation of the land in question:

A “zoning lot” is . . . (d) a tract of land . . . located within a single block, which at the time of filing for a building permit . . . is declared to be a tract of land to be treated as one zoning lot for the purpose of this Resolution . . . Each Declaration . . . shall be recorded in the Conveyances Section of the Office of the City Register . . . against each lot of record constituting a portion of the land covered by such Declaration. . . .

[A] complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraph[] . . . (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register [(underlined emphasis added)]; and

WHEREAS, the Development Site is “land” “located within a single *block*,”⁷ ZR § 12-10, bounded by Amsterdam Avenue, West 66th Street, West End Avenue and West 70th Street, as illustrated on Zoning Map 8c,8 which map is incorporated into the Zoning Resolution; and

WHEREAS, the Development Site has been “declared to be a tract of land to be treated as one *zoning lot* for the purpose of this Resolution,” ZR § 12-10, as evidenced by the Zoning Lot Declaration; and

WHEREAS, the Zoning Lot Declaration contains a metes and bounds description of the Development Site, referred to therein as Zoning Lot 2, in Exhibit I:

Description of Zoning Lot 2

All those certain lots, pieces or parcels of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, Bounded and Described as follows:

Beginning at a point on the westerly side of Amsterdam Avenue, distant 100'5" (100.42') southerly from the corner formed by the intersection of the westerly side of Amsterdam Avenue and the southerly side of West 70th Street; running thence southerly along the westerly side of Amsterdam Avenue 152'8-7/8" (152.73'); thence westerly 110'; thence southerly 58'8-1/8" (58.67'); thence westerly 69'0-1/2" (69.04'); thence westerly, along the arc of a circle bearing to the left, having a radius of 63'9" (63.75'); thence northerly 65'10-3/4" (65.89'); thence westerly 164'; thence southerly 46'; thence westerly 46'; thence westerly 68'; thence southerly 172'4" (172.33'); thence easterly 68'; thence southerly 148'; thence westerly 68';

⁶ As indicated by the Board’s vote and as discussed further herein, a minority of the Board finds that Appellant has shown that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition. (It is undisputed that the Development Site does not comply with paragraphs (a), (b) or (c) of the “zoning lot” definition.)

⁷ The Zoning Resolution defines a “block” as “a tract of land bounded by . . . streets.” ZR § 12-10.

⁸ The Zoning Resolutions defines “zoning maps” as “the maps incorporated into the provisions of this Resolution in accordance with the provisions of Section 11-14 (Incorporation of Maps).” ZR § 12-10.

MINUTES

thence southerly 74'2" (74.17'); thence westerly 13'11" (13.92'); thence northerly 108'3" (108.25'); thence westerly 98'1" (98.08'); thence northerly 59'8" (59.67'); thence westerly 151'1" (151.08'); thence southerly 59'8" (59.76'); thence westerly 48'7" (48.58'); thence northerly 158'3-1/2" (158.29'); thence easterly 37'; thence southerly 60'10-1/2" (60.88'); thence easterly 162'8" (162.67'); thence northerly 60'10-1/2" (60.88'); thence easterly 98'1" (98.08'); thence northerly 164'; thence westerly 48'; thence thence northerly 18'11" (18.96'); thence westerly 179'9" (179.75'); thence southerly 12'11"; thence westerly 100'; thence northerly 223'10" (223.83'); thence easterly 100'; thence southerly 200'10" (200.83'); thence easterly 545'; thence northerly 120'5" (120.42'); thence easterly 155' to the westerly side of Amsterdam Avenue, the point or place of beginning; and

WHEREAS, the Zoning Lot Declaration defines Zoning Lot 2—that is, the Development Site—as “a zoning lot comprised of Tax Lots 133, 134, p/o 1101–1107 f/k/a 70; p/o 1201–1208 f/k/a 80; 1501–1672 f/k/a 65; p/o 1001–1007 f/k/a 1; p/o 1401–1405 f/k/a 30, and more particularly described on *Exhibit P*” above; and

WHEREAS, in the Property Data section, the Zoning Lot Declaration’s Recording and Endorsement Cover Page and continuation pages state the following: Lots 133 (Entire Lot), 134 (Entire Lot), 1001 (Partial Lot), 1002 (Partial Lot), 1003 (Entire Lot), 1004 (Partial Lot), 1005 (Partial Lot), 1006 (Partial Lot), 1007 (Partial Lot), 1401 (Partial Lot), 1402 (Partial Lot), 1403 (Partial Lot), 1404 (Partial Lot), 1101 (Partial Lot), 1102 (Partial Lot), 1103 (Partial Lot), 1104 (Partial Lot), 1105 (Partial Lot), 1106 (Partial Lot), 1107 (Partial Lot), 1201 (Partial Lot), 1201 (Partial Lot), 1203 (Partial Lot), 1204 (Partial Lot), 1205 (Partial Lot), 1206 (Partial Lot), 1207 (Partial Lot), 1208 (Partial Lot), 1501 (Partial Lot), 1502 (Partial Lot), 1503 (Partial Lot), 1504 (Entire Lot), 1505 (Partial Lot), 1506 (Partial Lot), 1507 (Partial Lot), 1508 (Partial Lot), 1509 (Partial Lot), 1509 (Partial Lot), 1510 (Partial Lot), 1511 (Partial Lot), 1512 (Partial Lot), 1513 (Partial Lot), 1514 (Partial Lot), 1515 (Partial Lot), 1516 (Partial Lot), 1517 (Partial Lot), 1518 (Partial Lot), 1519 (Partial Lot), 1520 (Partial Lot), 1521 (Partial Lot), 1522 (Partial Lot), 1523 (Partial Lot), 1524 (Partial Lot), 1525 (Partial Lot), 1526 (Partial Lot), 1527 (Partial Lot), 1528 (Partial Lot), 1529 (Partial Lot), 1530 (Partial Lot), 1531 (Partial Lot), 1532 (Partial Lot), 1533 (Partial Lot), 1534 (Partial Lot), 1535 (Partial Lot), 1536 (Partial Lot), 1537 (Partial Lot), 1538 (Partial Lot), 1539 (Partial Lot), 1540 (Partial Lot), 1541 (Partial Lot), 1542 (Partial Lot), 1543 (Partial Lot), 1544 (Partial Lot), 1545 (Partial Lot), 1546 (Partial Lot), 1547 (Partial Lot), 1548 (Partial Lot), 1549 (Partial Lot), 1550 (Partial Lot), 1551 (Partial Lot), 1552 (Partial Lot), 1553 (Partial Lot), 1554 (Partial Lot), 1555 (Partial Lot), 1556 (Partial Lot), 1557 (Partial Lot), 1558 (Partial Lot), 1559 (Partial

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WHEREAS, accordingly, the Zoning Lot Declaration’s Recording and Endorsement Cover Page and continuation pages indicate the Zoning Lot Declaration has been recorded in the Office of the City Register “against each lot of record constituting a portion of the land covered by such Declaration” in accordance with paragraph (d) of the “zoning lot” definition, ZR § 12-10; and

WHEREAS, contrary to assertions made by Appellant and DOB (insofar as DOB argues that its “current interpretation” of the “zoning lot” definition is “correct” because complete tax lots are the only types of lots that a Declaration can be recorded “against”), it is clear from the record in this appeal that the Zoning Lot Declaration may be recorded against “Partial [Tax] Lot[s]” in light of the Zoning Lot Declaration’s Recording and Endorsement Cover Page and continuation pages; and

WHEREAS, the Zoning Lot Declaration’s description of the Development Site corresponds to the Zoning Lot

MINUTES

Description and Ownership Statement, City Register File No. 201700053112, dated January 26, 2017, which contains “a complete metes and bounds of the *zoning lot*, the tax lot number[s], the block number and the ownership of the *zoning lot*,” ZR § 12-10 (final paragraph of “zoning lot” definition); and

WHEREAS, contrary to assertions made by Appellant and DOB, it is clear from the record in this appeal that the Zoning Lot Description and Ownership Statement may be recorded against “Partial [Tax] Lot[s]” in light of the Zoning Lot Description and Ownership Statement’s Recording and Endorsement Cover Page and continuation pages; and

WHEREAS, accordingly, as set forth in the Zoning Lot Description and Ownership Statement, there is a single legal description with dimensions set forth in “metes and bounds” for the Development Site, which description has been recorded in the Office of the City Register, ZR § 12-10 (final paragraph of “zoning lot” definition); and

B. Purposes of Delineation

WHEREAS, turning again to ZR § 12-10, the following text pertains to the purposes of delineating the land in question:

A “zoning lot” is . . . (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet . . . , which . . . is declared to be a tract of land to be treated as one zoning lot for the purpose of this Resolution.

A zoning lot, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York, or on any recorded subdivision plat or deed [(underlined emphasis added)]; and

WHEREAS, as one specifically delineated land parcel, described by metes and bounds, the Development Site is “a” single “tract of land,” ZR § 12-10; and

WHEREAS, no categorical rule appears in the provisions of the Zoning Resolution that a “tract of land” need be a complete tax lot; and

WHEREAS, the Zoning Lot Description and Ownership Statement indicates that the Development Site is a land assemblage involving multiple owners and multiple tax lot numbers; and

WHEREAS, the Zoning Lot Declaration indicates that, as a whole, the Development Site is “to be treated as one *zoning lot* for the purpose of” the Zoning Resolution, ZR § 12-10; and

WHEREAS, the Zoning Lot Declaration indicates that the Development Site has been subdivided from the Combined Land Parcel⁹ but, as a result of said subdivision,¹⁰ the Development Site in and of itself

constitutes a single, unified tract of land; and

WHEREAS, the Zoning Resolution expressly provides that a zoning lot “may not”—and, in fact, the Development Site does not—“coincide” with a lot shown on the City’s tax map, ZR § 12-10; and

WHEREAS, the record in this appeal indicates that the phrase “may not coincide with a lot as shown on the official tax map” does not refer only to tax-lot boundaries traversing the interior of a zoning lot comprised of two or more complete, abutting tax lots sharing tax-lot boundaries, and there is affirmative evidence—including DOB-issued certificates of occupancy indicating that other parcels located on the subject block that include partial tax lots comply with applicable zoning regulations—that a zoning lot’s perimeter “may not coincide” with tax-lot boundaries in accordance with the plain meaning of that phrase, ZR § 12-10; and

WHEREAS, the record in this appeal—including the Valletta Memorandum, which describes zoning lots as the basis for the application of the bulk provisions of the Zoning Resolution, and the Department of City Planning’s *A Survey of Transferable Development Rights Mechanisms in New York City* (Feb. 26, 2015), which describes tax-lot boundaries as unrelated to any land-use purpose—also indicates that the Zoning Resolution and the City’s tax map serve different purposes and that “not coincid[ing]” with tax-lot boundaries does not prevent a tract of land from complying with paragraph (d) of the “zoning lot” definition or other applicable zoning regulations, which are based on the size, location and orientation of a “zoning lot,” not its constituent tax lots; and

C. Assemblage and Constituents

WHEREAS, with respect to ZR § 12-10, the following part of the “zoning lot” definition relates to the assemblage and constituents of the land in question:

A “zoning lot” is . . . (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet [(underlined emphasis added)]; and

WHEREAS, because of the either-or construction the text employs, the Development Site need only be one of the following: “unsubdivided” or “consisting of two or more lots of record contiguous for a minimum of ten linear feet,” ZR § 12-10; and

WHEREAS, Appellant would urge these to be mutually exclusive categories; and

WHEREAS, reading the entirety of the “zoning lot” definition, it is clear that its paragraphs may overlap: a paragraph (a) “lot of record” that existed in 1961 may also

thereon shall comply with all of the applicable provisions of” the Zoning Resolution, nothing in the record indicates that the zoning-lot subdivision evinced by the Zoning Lot Declaration contravened any applicable zoning provision. Insofar as Appellant alleges such non-compliance with respect to applicable “open space” regulations, as discussed herein, the Board finds no merit in this contention.

⁹ The Board expresses no opinion as to the Combined Land Parcel or other tracts of land that are not before the Board in this appeal.

¹⁰ Consistent with the “zoning lot” definition, which states that zoning lots “may be subdivided into two or more *zoning lots*, provided that all resulting *zoning lots* and all *buildings*

MINUTES

today be a paragraph (c) unsubdivided tract of land; and

WHEREAS, similarly overlapping, tax lots may—in some instances—be “lots of record” under the “zoning lot” definition,¹¹ ZR § 12-10; and

WHEREAS, however, it does not follow that all “lots of record” are complete tax lots or that only complete tax lots are “lots of record,” ZR § 12-10; and

WHEREAS, the “zoning lot” definition specifically refers to different types of lots: “a lot as shown on the official tax map,” “a lot as shown . . . on any recorded subdivision plat,” “a lot as shown . . . on any recorded . . . deed,” “[p]arcels . . . that were numerically identified for leasing purposes on maps filed in the Office of the Borough President” and a “tax lot”; and

WHEREAS, for a lot to be considered “of record” under the Zoning Resolution, it must have been “legally recorded,” City Planning Commission Report No. N 810406 ZRQ (August 12, 1981)¹²; and

WHEREAS, it is undisputed in this appeal that complete tax lots are “legally recorded” lots, *id.*; and

WHEREAS, were complete tax lots the only lots considered by the Zoning Resolution to be “lots of record,” ZR § 12-10, it would be wholly unnecessary for the Zoning Resolution to further refer to lots “on any recorded subdivision plat or deed”; and

WHEREAS, Appellant’s complete-tax-lots-only interpretation of the phrase “lots of record” would render the Zoning Resolution’s specific statement about lots “on any recorded subdivision plat or deed” wholly redundant because the only “lots of record” would be the previously described “lot as shown on the official tax map”; and

WHEREAS, accordingly, for the phrase “recorded subdivision plat[s] or deed[s]” to have any meaning, “lots of record” must be an umbrella category in which complete tax lots are included, though not to the exclusion of other recorded lots; and

WHEREAS, Appellant urges that an “unsubdivided” “tract of land” must be a single “lot of record”—essentially a legally recorded lot; and

WHEREAS, “unsubdivided” is not defined and is subject to several interpretations, including but not limited to Appellant’s assertion that “unsubdivided” means that a tract of land has never been subdivided on the tax map of the City of New York; and

WHEREAS, the use of the term “unsubdivided” may also refer to situations where the boundaries of a tract of

land are merged for zoning purposes with those of an adjacent parcel, thereby creating a single land assemblage aggregated for development purposes with a single metes and bounds description; and

WHEREAS, even assuming that an “unsubdivided” “tract of land” means a single “lot of record,” the Development Site is itself a single lot of record and accordingly meets Appellant’s proffered interpretation of an “unsubdivided” “tract of land”; and

WHEREAS, it is undisputed in this appeal and the record reflects that the Development Site has a single metes and bounds description set forth in a plethora of recorded documents provided by Appellant; and

WHEREAS, it is also undisputed in this appeal and the record further reflects that the Development Site is a single lot shown on a number of maps recorded in the Office of the City Register provided by Appellant; and

WHEREAS, various recorded documents in the record—including the Zoning Lot Declaration and legal instruments—indicate that the Development Site in and of itself constitutes, in the aggregate, a single tract of land with multiple owners and parties in interest, which tract is ultimately described around its perimeter by metes and bounds as one specifically delineated, unified land parcel; and

WHEREAS, additionally, the Zoning Lot Declaration declares, in satisfaction of paragraph (d) of the “zoning lot” definition, that the Development Site is treated as one zoning lot for the purposes of the Zoning Resolution; and

WHEREAS, accordingly, the Development Site is “unsubdivided” for zoning purposes, ZR § 12-10; and

WHEREAS, it is undisputed in this appeal that the Development Site is described or shown on a number of documents and maps recorded in the Office of the City Register as “consisting of two or more” legally recorded lots; and

WHEREAS, accordingly, Appellant has failed to demonstrate that the Development Site does not “consist[] of two or more lots of record contiguous for a minimum of 10 linear feet,” ZR § 12-10; and

WHEREAS, based on the record in this appeal and consistent with paragraph (d) of the “zoning lot” definition, as a single land assemblage aggregated for the purpose of developing the New Building in compliance with the Zoning Resolution, the Development Site is itself—for the purposes of the Zoning Resolution—“either unsubdivided or consisting of two or more lots of record,” ZR § 12-10; and

D. Evidence

WHEREAS, considering all of the evidence in the record, the interpretation herein is consistent with the City’s longstanding administration of zoning lots; and

WHEREAS, the discussion herein is consistent with the Board’s own prior precedent in *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), as upheld in *Golia v. Srinivasan*, 95 A.D.3d 628, 630 (N.Y. App. Div. 2012), insofar as an “unsubdivided” “tract of land” is not necessarily governed by tax-lot boundaries and may refer to

¹¹ The Board need not and does not consider or address the various types of tax lots in this appeal. That said, the Department of Finance has recently released a three-dimensional digital tax map that visualizes air lots: tax lots floating above the ground in air space. As a point of comparison, the “zoning lot” definition is rooted to the ground with its “tract of land” verbiage. ZR § 12-10.

¹² Appellant cites this City Planning Commission report in its history of the “zoning lot” definition.

MINUTES

a tract of land that traverses parts of tax lots, ZR § 12-10; although said appeal does not directly speak to the zoning-lot issue presented in this appeal, the Board had considered paragraph (a) of the “zoning lot” definition and interpreted the phrase “lot of record existing on December 15, 1961,” as including a separate, individually designated plot within the Breezy Point Cooperative that was part of a single, larger tax lot; and

WHEREAS, City Planning Commission Report No. N 0760226 ZRY (July 13, 1977) (the “CPC Report”), filed in connection with the text amendment that introduced paragraph (d) of the “zoning lot” definition, states: “[W]here two or more adjacent properties have a property interest, they shall jointly declare and record their parcels as a single zoning lot for development purposes”; and

WHEREAS, CPC Report continues:

[A] single zoning lot can be created from adjacent, differently held *parcels* through the filing and recording of a declaration of single zoning lot status executed by all parties having a defined interest in the *parcels in question*, such recording of a declaration of single zoning lot status executed by all parties having a defined interest in the *parcels in question*, such recording to be against each tax lot constituting a portion of the land covered by such declaration and to be in the Office of the City Register. . . . The declaration would *declare the several parcels to be one zoning lot*, and this zoning lot would remain integral, notwithstanding any party’s breach of a provision of the declaration or any agreement ancillary thereto, until such time as the zoning lot is subdivided in accordance with existing zoning lot subdivision rules. These rules preclude any subdivision’s creating-noncompliance with any applicable provisions of the zoning. The recorded declaration will put all persons on notice that the *several parcels in question* have been constituted as one zoning lot (the recording of the declaration will eliminate the current problem of not being able to determine from the public record whether a building has been built in part on the basis of development rights applicable to land on which the building is not physically located). The amendment as proposed thus protects the City’s interest in avoiding overbuilding, and provides private parties with certainty based on which they can protect their own interest. When a declared zoning lot has to be subdivided creating potential non-compliance, it is necessary to record a restrictive declaration constituting an enforceable covenant running with the land in perpetuity restricting all properties within each newly subdivided portion in accordance with the terms and agreement as originally set forth in the declared zoning lot [(emphasis added)]; and

WHEREAS, consistent with the CPC Report, the Development Site contains adjacent “parcels” that have been “jointly declare[d] and record[ed] . . . as a single zoning lot for development purposes,” *id.*; and

WHEREAS, by being recorded, the Zoning Lot Declaration “put[s] all persons on notice that the several parcels in question have been constituted as one zoning lot,” *id.*; and

WHEREAS, the Minkin Memorandum—while not conclusive insofar as the interpretation memorialized therein could conflict with the Zoning Resolution and insofar as the standard of review in this appeal is *de novo*—states that “a single zoning lot . . . may consist of one or more tax lots or parts of tax lots,” and a majority of the Board credits this interpretation as being consistent with the “zoning lot” definition, as discussed herein; and

WHEREAS, a majority of the Board does not credit Appellant or DOB’s dismissal of the Minkin Memorandum as setting forth an “incorrect” interpretation, rather than an alternative interpretation equally supported by a plain reading of the text, because, as discussed above, the Development Site does consist of parts of tax lots but is also “unsubdivided or consisting of two or more lots of record,” ZR § 12-10; and

WHEREAS, a majority of the Board does not credit DOB’s unsubstantiated assertion that tax lots are the only lots that can be recorded against, which appears to be DOB’s main argument as to why “lots of record” can only mean complete tax lots, because the record contradicts this statement; and

WHEREAS, in accordance with the Minkin Memorandum, since 1987, DOB has issued 28 binding-and-conclusive certificates of occupancy to buildings on the subject block certifying that parcels of land that include partial tax lots comply with applicable zoning requirements; and

WHEREAS, the Development Site includes land within the tax-lot boundaries of 150 West End Avenue, 160 West End Avenue, 170 West End Avenue, 180 West End Avenue and 200 West End Avenue, which have received 21 certificates of occupancy since 1987 certifying that parcels of land that include partial tax lots comply with applicable zoning requirements; and

WHEREAS, notably, in 2018, during the pendency of this appeal, DOB issued 170 Amsterdam Avenue a certificate of occupancy certifying that the Combined Land Parcel’s subdivision—the exact subdivision that formed the Development Site—into two parcels of land that include partial tax lots complies with applicable zoning requirements; and

WHEREAS, notwithstanding the history of development on the subject block and the issuance of said certificates of occupancy, DOB has argued in this appeal that the purpose of the draft Buildings Bulletin—which a majority of the Board is unconvinced will ever “see the light of day”—is to correct a purportedly erroneous interpretation of the “zoning lot” definition reflected in the Minkin

MINUTES

Memorandum; and

WHEREAS, it is unclear by what authority DOB could apply the draft Buildings Bulletin's purportedly corrected interpretation (that zoning lots cannot consist of partial tax lots) to the Development Site when DOB has issued certificates of occupancy on the subject block—some covering the very tract of land at issue in this appeal—certifying that the opposite proposition (that zoning lots can consist of partial tax lots) complies with applicable zoning requirements, *see* New York City Charter § 645(3); and

WHEREAS, accordingly, based on the record in this appeal, a majority of the Board is unpersuaded by DOB's assertions that the Minkin Memorandum is "incorrect" or that only complete tax lots can be "lots of record," ZR § 12-10; and

WHEREAS, in *A Survey of Transferable Development Rights Mechanisms in New York City* 5–6 (Feb. 26, 2015), the Department of City Planning states:

Zoning lot mergers . . . combine contiguous tax lots within a block, *eliminating lot lines for zoning purposes* and *allowing the free movement of floor area* within the merged zoning lot. . . .

Because ZLMs don't otherwise allow for exceptions to bulk or other regulations, and because they don't allow any buildings or developments that couldn't happen as of right anyway, the city has not found it necessary to restrict or regulate ZLMs beyond the recording requirement and regulations to curb what might be considered extreme uses of the measure.

Regulation beyond that may prove problematic. *Tax lot lines reflect historic ownership patterns but typically do not relate to any land use purposes.* Restrictions on the ability to merge them into unified zoning lots would give *land use effect to tax lot lines*, often without an obvious underlying land use rationale. That may present legal and administrative difficulties [(emphasis added)]; and

WHEREAS, the interpretation herein would not "give land use effect to tax lot lines," *id.*; and

WHEREAS, the Valletta Memorandum describes a zoning lot as "the essential building block on which the bulk calculations of the Zoning Resolution were intended to be calculated"; and

WHEREAS, according to the Plans, the zoning calculations for the New Building have been computed based on the Development Site; and

E. Minority Position

WHEREAS, a minority of the Board finds that the meaning of "lot of record" and its relationship to the Development Site is dispositive as to whether the Development Site complies with the "zoning lot" definition; and

WHEREAS, a minority of the Board notes that a "lot of record," though undefined in the Zoning Resolution, is an entire tax lot; and

WHEREAS, a minority of the Board notes that, within the Borough of Manhattan, "of record" refers to being recorded with and maintained by the Office of the City Register; and

WHEREAS, a minority of the Board notes that the "zoning lot" definition itself uses "record" in a number of instances: "a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration," "any recorded subdivision plat or deed," "any enforceable recorded interest superior to that of the fee owner," "any enforceable recorded interest in all or substantially all of such tract of land," "any unrecorded interest in all or substantially all of such tract of land," "the same, as well as each such waiver, have been duly recorded," "their execution and recording of a Declaration," "any enforceable recorded interest," "the holder of any enforceable recorded interest," any unrecorded interest," "prior leasehold agreements shall be duly recorded" and "a complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraphs (a), (b), (c) and (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register (or, if applicable, the County Clerk's Office) of the county in which the said *zoning lot* is located," ZR § 12-10 (underlined emphasis added); and

WHEREAS, a minority of the Board notes that, in each instance, recording evinces the act of depositing an official document with the appropriate authority, which in the Borough of Manhattan is the City Register; and

WHEREAS, a minority of the Board notes, however, that "lot of record" as used in the "zoning lot" definition dates to 1961, before the "zoning lot" definition was amended to allow for the recording of declarations with respect to zoning lots; and

WHEREAS, a minority of the Board notes that there is no indication in the record in this appeal of any other instances of recording that would lead to the conclusion that "lots of record" does not refer to tax lots "as shown on the official tax map of the City of New York," ZR § 12-10; and

WHEREAS, a minority of the Board notes that Appellant has demonstrated that, in 1961, there was no other formal record for any kind of land use and that the only form a "lot of record" could take was as a tax lot; and

WHEREAS, a minority of the Board notes that this interpretation is further evidenced by the requirement that, under paragraph (d), a zoning lot may "consist[] of two or more" tax lots and that such language contains no suggestion that a zoning lot may "consist[] of" parts of "two or more" tax lots; and

WHEREAS, a minority of the Board notes that, if a tract of land is "unsubdivided," it cannot include parts of tax lots; and

WHEREAS, a minority of the Board notes that there is a connection between the purposes served by zoning lots and tax lots because, for decades, the City has required that newly created tax lots comply with all applicable zoning regulations under Section 11-203 of the Administrative Code

MINUTES

of the City of New York; and

WHEREAS, a minority of the Board notes that interpreting the “zoning lot” definition to require whole tax lots and disallowing parts of tax lots furthers the City’s interest in ensuring zoning compliance; and

WHEREAS, a minority of the Board finds that, based upon the foregoing, the Minkin Memorandum sets forth an erroneous interpretation of the “zoning lot” definition that should no longer be followed because a “lot of record” is an entire tax lot; and

WHEREAS, accordingly, a minority of the Board finds that, because the Development Site includes partial tax lots, the Development Site does not comply with the “zoning lot” definition and that this appeal should be granted on that basis alone; and

Conclusion

WHEREAS, based upon the foregoing, a majority of the Board finds that, as a single land assemblage aggregated for the purpose of developing the New Building in compliance with the Zoning Resolution, the Development Site is a “tract of land” that is “either unsubdivided or consisting of two or more lots of record,” consistent with paragraph (d) of the “zoning lot” definition; and

WHEREAS, accordingly, a majority of the Board finds no basis to grant this appeal with respect to Appellant’s assertion that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition; and

II. OPEN SPACE

WHEREAS, the Board unanimously finds that ground-level open areas on the Development Site comply with the Zoning Resolution’s “open space” requirements under ZR §§ 12-10, 25-64 and 23-12; and

WHEREAS, ZR § 12-10 defines “open space,” in pertinent part, as follows:

“Open space” is that part of a *zoning lot*, including *courts* or *yards*, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*. . . . ; and

WHEREAS, the Plans indicate that there will be ground-level open areas on the Development Site; and

WHEREAS, there is no basis to import requirements from non-applicable provisions in strictly applying and interpreting the text of the generally applicable “open space” definition; and

WHEREAS, the evidence in the record, including the Plans, which illustrate no physical barriers to the Development Site’s occupants, and a private agreement between parties in interest on the Development Site, assures that these ground-level open areas are “accessible to and usable by” residential occupants of the Development Site; and

WHEREAS, the Board credits DOB’s testimony that an inspection will be performed prior to the issuance of a certificate of occupancy to ensure that actual conditions continue to conform to the Plans with respect to open space;

and

WHEREAS, the Plans indicate that these ground-level open areas will be “open and unobstructed from its lowest level to the sky”; and

WHEREAS, the Board finds that these ground-level open areas on the Development Site meet the “open space” definition; and

WHEREAS, ZR § 25-64 provides, in relevant part: Restrictions on the use of open space for parking and driveways are set forth in this Section, in accordance with the provisions of Section 23-12 (Permitted Obstructions in Open Space). . . .

(d) In R6, R7, R8, R9 and R10 Districts without a letter suffix, driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths may not use more than 50 percent of the required *open space* on any *zoning lot*. The provisions of this paragraph, (c), shall not apply to *Quality Housing buildings*; and

WHEREAS, ZR § 23-12 states, in relevant part: In the districts indicated, the following obstructions shall be permitted in any *open space* required on a *zoning lot*:

(f) Driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths, provided that the total area occupied by all these items does not exceed the percentages set forth in Section 25-64 (Restrictions on Use of Open Space for Parking); and

WHEREAS, the Development Site’s ground-level open areas contain driveways¹³; and

WHEREAS, the Plans indicate that not “more than 50 percent of the required *open space*” on the Development Site is used by driveways; and

WHEREAS, there is no basis to import the word “accessory” into these provisions where the text describes some permitted obstructions as “accessory” but not others; and

WHEREAS, the text does not describe driveways as “accessory”; and

WHEREAS, the Board finds that the driveways located in the ground-level open areas are permitted obstructions under ZR §§ 25-64 and 23-12; and

WHEREAS, accordingly, the Board finds no basis to grant this appeal with respect to Appellant’s assertion that the Development Site does not comply with the Zoning Resolution’s “open space” requirements; and

CONCLUSION

13 Insofar as the record includes discussion of parking, the Board expresses no opinion because the Plans, under which the Permit was issued, do not reflect parking in the ground-level open areas.

MINUTES

WHEREAS, the Board has considered all of the arguments on appeal, but a majority of the Board finds them ultimately unpersuasive; and

WHEREAS, notwithstanding the above, DOB is tasked with administering and enforcing the Zoning Resolution for over one million properties within the City of New York, *see* ZR § 71-00; in furtherance of this mission, the New York City Charter and the New York City Construction Codes—as well as other sources of legal authority—provide DOB with wide latitude to develop and employ new techniques for the effective enforcement of the City’s Zoning Resolution; and nothing herein shall be deemed an abrogation of DOB’s enforcement authority with respect to developing techniques that ensure the lawful use and development of buildings within the City; and

WHEREAS, however, for the foregoing reasons and based on the record in this appeal, a majority of the Board finds that Appellant has failed to demonstrate that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition, and the Board unanimously finds that Appellant has failed to demonstrate that ground-level open areas on the Development Site do not comply with the Zoning Resolution’s “open space” requirements.

Therefore, it is Resolved, that the permit issued by the Department of Buildings on September 27, 2017, under New Building Application No. 122887224, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, July 17, 2018.

Adopted by the Board of Standards and Appeals, as revised, June 25, 2019.

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

1-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3rd and 4th floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Compliance hearing closed; application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is a compliance hearing on two variances, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 2, 2016, after due notice by publication in *The City Record*, with continued hearings on November 15, 2016, February 14, 2017, April 25, 2017, May 2, 2017, July 18, 2017, September 26, 2017, December 12, 2017, March 6, 2017, March 27, 2018, May 1, 2018, August 7, 2018, November 8, 2018, February 5, 2019, April 9, 2019, and June 25, 2019, and then to decision on the same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Board has exercised jurisdiction over 600 McDonald Avenue since June 24, 1997, when, under BSA Calendar Number 1-96-BZ, the Board granted a variance to permit the proposed second-story enlargement to an existing non-complying one-story building used as a school on condition that all work substantially conform to the Board-approved plans and on further condition that screening and fencing be maintained in accordance with the Board-approved plans; that landscaping be maintained in accordance with the Board-approved plans; and that fire-safety measures be maintained in accordance with the Board-approved plans; and

WHEREAS, the Board has exercised jurisdiction over 317 Dahill Road since May 14, 2002, when, under BSA Calendar Number 56-02-BZ, the Board granted a variance to permit the construction of a four-story, with cellar, school building on condition all work substantially conform to the Board-approved plans and on further condition that fire-protection measure be provided in maintained in accordance with the Board-approved plans; and

WHEREAS, the owner of 600 McDonald Avenue subsequently sought a variance, under BSA Calendar

MINUTES

Number 17-14-BZ, to construct a two-story enlargement to the existing school building, which was withdrawn; and

WHEREAS, however, during the course of hearings on BSA Calendar Number 17-14-BZ, it came to light that there were substantial non-compliances with the variances granted under BSA Calendar Numbers 1-96-BZ and 56-02-BZ; and

WHEREAS, more specifically, it appeared that large-scale private events unrelated to any educational program were being held in these school buildings on a nightly basis, causing significant disruption to the surrounding residential neighborhood; and

WHEREAS, these disruptions included large amounts of vehicular and pedestrian traffic, improper disposal of food waste, and late-night noise; and

WHEREAS, an inspection performed by the Department of Buildings corroborated that, during the summer, while the schools were closed, receptions were being held in the “school cafeteria area” that “had nothing to do with the school”; and

WHEREAS, by letter dated July 26, 2016, the Fire Department states that it objects to the illegal use of the school cafeteria at 600 McDonald Avenue and the adjacent 317 Dahill Road, as a confirmed commercial banquet hall with commercial catering; and

WHEREAS, by letter dated July 26, 2016, the Fire Department states that, at the Board’s request, it has conducted an inspection of the premises, which resulted in the issuance of a violation order for operating contrary to the certificate of occupancy (“Catering observed”); and

WHEREAS, by letter dated April 14, 2018, the Fire Department states that it performed two inspections that resulted in the issuance of five violations on April 9, 2018, and, witnessing an event being held at the time of inspection with no Temporary Public Assembly permit, resulted in four criminal summonses, two new violation orders, and one FDNY summons; and

WHEREAS, by letter dated November 5, 2018, the Fire Department states that, after a reinspection of open violation orders, some open violation orders were dismissed; and

WHEREAS, during the course of hearings, the Board afforded the property owners the opportunity to demonstrate compliance with its grants; and

WHEREAS, with respect to the hosting of unrelated events, the applicant pursued and achieved a change to the zoning district to allow the primary use as a banquet hall with commercial catering on an-as-of-right basis in compliance with underlying zoning regulations; and

WHEREAS, with respect to fire-safety concerns, the owners presented evidence that Temporary Public Assembly permits had been procured and that fireguards had been hired and were stationed during events,

WHEREAS, by letter dated February 4, 2019, the Fire Department states that its Bureau of Fire Protection had conducted an inspection on January 23, 2019, where access was granted as an event was taking place; that inspectors

dismissed six outstanding violation orders with one violation order enforced to discontinue use of a meeting hall as a banquet hall; and that the Fire Department would continue to inspect the premises until the use is discontinued or a Public Assembly permit is obtained; and

WHEREAS, with respect to parking issues, the owners presented a parking study demonstrating that commercial events held at the sites did not result in the potential for adverse parking impacts; and

WHEREAS, additionally, the applicant supplied an operational plan on parking, trash storage, and trash handling to demonstrate that events would no longer disrupt the surrounding area; and

WHEREAS, in response to community concerns, the Board directed that that there be no deliveries of any kind made on Dahill Road, which is residential in character; that all deliveries shall be made from McDonald Avenue, which is commercial in character; that there shall be no obstruction of the sidewalk on either McDonald Avenue or Dahill Road is permitted by any fenced areas on the public sidewalk without obtaining a revocable consent; that all trash shall be stored on site, in refrigerated trash storage areas, that shall be emptied from the McDonald Avenue side; that all banquet event trash shall be removed from the site within one hour of event closure by a private carting company; that all trash pickup shall be from the McDonald Avenue side; that valet parking shall be provided for the banquet facilities’ events for a minimum of 50 automobiles for all events; that automobiles shall be parked on the off-site lot first before any on-street parking occurs; that entry to the banquet halls shall be from McDonald Avenue and Avenue C at the location of the women’s entrance; that school buses shall be parked off street in a parking lot; and that parking areas to accommodate bus and banquet parking shall be provided with long-term leases that run for the life of the uses; and

WHEREAS, ultimately, however, the record reflects that the owners have failed to comply with the Board’s grants by hosting nightly events wholly unrelated to any school use and instead are primarily using portions of the subject buildings as banquet facilities with commercial catering; and

WHEREAS, with the recent change in zoning district, the Board notes that, to legalize the banquet facilities, the owners must amend the Board-approved plans to reflect actual use as a banquet hall, which use now conforms to the underlying zoning regulations; and

WHEREAS, the Board finds that the evidence in the record supports that the applicant will bring the subject buildings into compliance, with certain safeguards and conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *close* this compliance hearing and does hereby *reopen* and *amend* the resolutions, dated June 24, 1997, and May 14, 2002, so that as amended this portion of the resolution shall read: “*on further condition*:

THAT the applicant shall file with the Board, using the

MINUTES

procedural method recommended by staff (either a letter of no objection, a letter of substantial compliance, or an amendment) according to the scope of changes and the as-built conditions, within three months;

THAT because the Board was unaware at the time of its grants that the two buildings are connected underground and rely on each other for kitchens, the plans must be amended accordingly with any other changes to be reflected on the plans;

THAT the applicants must apply to amend the certificates of occupancy to reflect the after-hours use of the school buildings for banquet facilities (and obtain a public assembly permit for this by demonstrating compliance with all applicable provisions of the New York City Building Code and Fire Code);

THAT there be no deliveries of any kind made on Dahill Road, which is residential in character;

THAT all deliveries shall be made from McDonald Avenue, which is commercial in character;

THAT there shall be no obstruction of the sidewalk on either McDonald Avenue or Dahill Road is permitted by any fenced areas on the public sidewalk without obtaining a revocable consent;

THAT all trash shall be stored on site, in refrigerated trash storage areas, that shall be emptied from the McDonald Avenue side;

THAT all banquet event trash shall be removed from the site within one hour of event closure by a private carting company;

THAT all trash pickup shall be from the McDonald Avenue side;

THAT valet parking shall be provided for the banquet facilities' events for a minimum of 50 automobiles for all events;

THAT automobiles shall be parked at the off-site parking lot first before any on-street parking occurs;

THAT entry to the banquet halls shall be from McDonald Avenue and Avenue C at the location of the women's entrance;

THAT school buses shall be parked off street in a parking lot;

THAT parking areas to accommodate bus and banquet parking shall be provided with long-term leases that run for the life of the uses;

THAT all of the above conditions must be complied with within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 26, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all of the Board's conditions shall appear on the certificates of occupancy;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 25, 2019.

56-02-BZ

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Compliance hearing closed; application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is a compliance hearing on two variances, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 2, 2016, after due notice by publication in *The City Record*, with continued hearings on November 15, 2016, February 14, 2017, April 25, 2017, May 2, 2017, July 18, 2017, September 26, 2017, December 12, 2017, March 6, 2017, March 27, 2018, May 1, 2018, August 7, 2018, November 8, 2018, February 5, 2019, April 9, 2019, and June 25, 2019, and then to decision on the same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Board has exercised jurisdiction over 600 McDonald Avenue since June 24, 1997, when, under BSA Calendar Number 1-96-BZ, the Board granted a variance to permit the proposed second-story enlargement to an existing non-complying one-story building used as a school on condition that all work substantially conform to the Board-approved plans and on further condition that screening and fencing be maintained in accordance with the Board-approved plans; that landscaping be maintained in accordance with the Board-approved plans; and that fire-safety measures be maintained in accordance with the Board-approved plans; and

WHEREAS, the Board has exercised jurisdiction over

MINUTES

317 Dahill Road since May 14, 2002, when, under BSA Calendar Number 56-02-BZ, the Board granted a variance to permit the construction of a four-story, with cellar, school building on condition all work substantially conform to the Board-approved plans and on further condition that fire-protection measure be provided in maintained in accordance with the Board-approved plans; and

WHEREAS, the owner of 600 McDonald Avenue subsequently sought a variance, under BSA Calendar Number 17-14-BZ, to construct a two-story enlargement to the existing school building, which was withdrawn; and

WHEREAS, however, during the course of hearings on BSA Calendar Number 17-14-BZ, it came to light that there were substantial non-compliances with the variances granted under BSA Calendar Numbers 1-96-BZ and 56-02-BZ; and

WHEREAS, more specifically, it appeared that large-scale private events unrelated to any educational program were being held in these school buildings on a nightly basis, causing significant disruption to the surrounding residential neighborhood; and

WHEREAS, these disruptions included large amounts of vehicular and pedestrian traffic, improper disposal of food waste, and late-night noise; and

WHEREAS, an inspection performed by the Department of Buildings corroborated that, during the summer, while the schools were closed, receptions were being held in the “school cafeteria area” that “had nothing to do with the school”; and

WHEREAS, by letter dated July 26, 2016, the Fire Department states that it objects to the illegal use of the school cafeteria at 600 McDonald Avenue and the adjacent 317 Dahill Road, as a confirmed commercial banquet hall with commercial catering; and

WHEREAS, by letter dated July 26, 2016, the Fire Department states that, at the Board’s request, it has conducted an inspection of the premises, which resulted in the issuance of a violation order for operating contrary to the certificate of occupancy (“Catering observed”); and

WHEREAS, by letter dated April 14, 2018, the Fire Department states that it performed two inspections that resulted in the issuance of five violations on April 9, 2018, and, witnessing an event being held at the time of inspection with no Temporary Public Assembly permit, resulted in four criminal summonses, two new violation orders, and one FDNY summons; and

WHEREAS, by letter dated November 5, 2018, the Fire Department states that, after a reinspection of open violation orders, some open violation orders were dismissed; and

WHEREAS, during the course of hearings, the Board afforded the property owners the opportunity to demonstrate compliance with its grants; and

WHEREAS, with respect to the hosting of unrelated events, the applicant pursued and achieved a change to the zoning district to allow the primary use as a banquet hall with commercial catering on an-as-of-right basis in

compliance with underlying zoning regulations; and

WHEREAS, with respect to fire-safety concerns, the owners presented evidence that Temporary Public Assembly permits had been procured and that fireguards had been hired and were stationed during events,

WHEREAS, by letter dated February 4, 2019, the Fire Department states that its Bureau of Fire Protection had conducted an inspection on January 23, 2019, where access was granted as an event was taking place; that inspectors dismissed six outstanding violation orders with one violation order enforced to discontinue use of a meeting hall as a banquet hall; and that the Fire Department would continue to inspect the premises until the use is discontinued or a Public Assembly permit is obtained; and

WHEREAS, with respect to parking issues, the owners presented a parking study demonstrating that commercial events held at the sites did not result in the potential for adverse parking impacts; and

WHEREAS, additionally, the applicant supplied an operational plan on parking, trash storage, and trash handling to demonstrate that events would no longer disrupt the surrounding area; and

WHEREAS, in response to community concerns, the Board directed that that there be no deliveries of any kind made on Dahill Road, which is residential in character; that all deliveries shall be made from McDonald Avenue, which is commercial in character; that there shall be no obstruction of the sidewalk on either McDonald Avenue or Dahill Road is permitted by any fenced areas on the public sidewalk without obtaining a revocable consent; that all trash shall be stored on site, in refrigerated trash storage areas, that shall be emptied from the McDonald Avenue side; that all banquet event trash shall be removed from the site within one hour of event closure by a private carting company; that all trash pickup shall be from the McDonald Avenue side; that valet parking shall be provided for the banquet facilities’ events for a minimum of 50 automobiles for all events; that automobiles shall be parked on the off-site lot first before any on-street parking occurs; that entry to the banquet halls shall be from McDonald Avenue and Avenue C at the location of the women’s entrance; that school buses shall be parked off street in a parking lot; and that parking areas to accommodate bus and banquet parking shall be provided with long-term leases that run for the life of the uses; and

WHEREAS, ultimately, however, the record reflects that the owners have failed to comply with the Board’s grants by hosting nightly events wholly unrelated to any school use and instead are primarily using portions of the subject buildings as banquet facilities with commercial catering; and

WHEREAS, with the recent change in zoning district, the Board notes that, to legalize the banquet facilities, the owners must amend the Board-approved plans to reflect actual use as a banquet hall, which use now conforms to the underlying zoning regulations; and

WHEREAS, the Board finds that the evidence in the

MINUTES

record supports that the applicant will bring the subject buildings into compliance, with certain safeguards and conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *close* this compliance hearing and does hereby *reopen* and *amend* the resolutions, dated June 24, 1997, and May 14, 2002, so that as amended this portion of the resolution shall read: “*on further condition*:

THAT the applicant shall file with the Board, using the procedural method recommended by staff (either a letter of no objection, a letter of substantial compliance, or an amendment) according to the scope of changes and the as-built conditions, within three months;

THAT because the Board was unaware at the time of its grants that the two buildings are connected underground and rely on each other for kitchens, the plans must be amended accordingly with any other changes to be reflected on the plans;

THAT the applicants must apply to amend the certificates of occupancy to reflect the after-hours use of the school buildings for banquet facilities (and obtain a public assembly permit for this by demonstrating compliance with all applicable provisions of the New York City Building Code and Fire Code);

THAT there be no deliveries of any kind made on Dahill Road, which is residential in character;

THAT all deliveries shall be made from McDonald Avenue, which is commercial in character;

THAT there shall be no obstruction of the sidewalk on either McDonald Avenue or Dahill Road is permitted by any fenced areas on the public sidewalk without obtaining a revocable consent;

THAT all trash shall be stored on site, in refrigerated trash storage areas, that shall be emptied from the McDonald Avenue side;

THAT all banquet event trash shall be removed from the site within one hour of event closure by a private carting company;

THAT all trash pickup shall be from the McDonald Avenue side;

THAT valet parking shall be provided for the banquet facilities’ events for a minimum of 50 automobiles for all events;

THAT automobiles shall be parked at the off-site parking lot first before any on-street parking occurs;

THAT entry to the banquet halls shall be from McDonald Avenue and Avenue C at the location of the women’s entrance;

THAT school buses shall be parked off street in a parking lot;

THAT parking areas to accommodate bus and banquet parking shall be provided with long-term leases that run for the life of the uses;

THAT all of the above conditions must be complied with within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel

coronavirus disease, by October 26, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all of the Board’s conditions shall appear on the certificates of occupancy;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 25, 2019.

2018-164-BZ

APPLICANT – Pryor Cashman LLP, for Franchise Realty Interstate Corp., owner.

SUBJECT – Application October 17, 2018 – Special Permit (§73-243) to permit the legalization of an accessory drive-through to an eating and drinking establishment (UG 6) (*McDonald’s*) contrary to ZR §32-15. C1-2/R4 zoning district.

PREMISES AFFECTED – 72-71 Kissena Boulevard, Block 6805, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, June 25, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M. for continued hearing.

MINUTES

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – Variance (§72-21) to permit construction of a cellar and three (3) story residential condominium with six (6) dwelling units and ten (10) off-street parking spaces contrary to ZR §22-11 (multi-family buildings not permitted in an R1-2 zoning district; ZR §§ 23-00 & 25-00) no bulk or parking regulations for multi-family buildings. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M. for continued hearing.

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*CrossFit*) within an existing one store commercial building contrary to ZR §42-10 located in M1-4 zoning district.

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2017-273-BZ

APPLICANT – Law Office of Lyra J. Altman, for Carol Greenberger & Sidney Greenberger, owners.

SUBJECT – Application September 27, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 975 East 24th Street, Block 7588, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for continued hearing.

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 406 Remsen Avenue, Block

4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2018-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jackie Cohen-Arazi, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1249 East 23rd Street, Block 7641, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 6, 2019, at 10 A.M., for continued hearing.

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 104 DeGraw Street, Block 329, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – Special Permit (§73-622) for the enlargement of an existing single family-home contrary to floor area, open space and lot coverage (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 25, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR**2018-154-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Simcha Gruenburg and Libby Gruenburg, owners.

SUBJECT – Application October 11, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 966 East 24th Street, Block 7587, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

2018-168-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Cohen, owner.

SUBJECT – Application October 22, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-141); open space and lot coverage (ZR § 23-142); rear yard (ZR § 23-47), and side yard regulations (§§ 23-47 & 23-461)). R3-2 zoning district.

PREMISES AFFECTED – 1769 East 26th Street, Block 6809, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

2019-15-BZ

APPLICANT – Akerman LLP, for CS Cooper Avenue LLC, owner.

SUBJECT – Application January 18, 2019– Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Children of America*) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 79-40 Cooper Avenue, Block 3803, 3804, Lot(s) 39, 1, 39, 164, 178, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

CORRECTION

This resolution adopted on July 12, 2016, under Calendar No. 99-14-BZ and printed in Volume 101, Bulletin Nos. 28-29, is hereby corrected to read as follows:

99-14-BZ

CEQR #14-BSA-151M

APPLICANT – Arisa Realty Co., X LLC, owner.

SUBJECT – Application May 8, 2014 – Variance (§72-21) for a height and setback variance to facilitate the construction of a new 21-story, 19 FAR hotel building. C6-4 zoning district in the (Special Hudson Yards District).

PREMISES AFFECTED – 432-434 West 31st Street, aka 433-435 West 30th Street, corner of West 31st Street and Dyer Avenue, Block 728, Lot(s) 50, 55, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated December 2, 2015, acting on DOB Application No. 121185181 reads in pertinent part:

1. ZR 93-42(a): Proposed base height exceeds height permitted;
2. ZR 93-42(b): Initial setbacks not provided as required;
3. ZR 93-42(c): Portion of building above 150’ occupies greater percentage of lot area than is permitted; and

WHEREAS, this is an application under ZR § 72-21 to permit, in a C6-4 zoning district, the Special Hudson Yards District, the Farley Corridor Subdistrict B and the Central Blocks Subarea B2, the construction of a 25-story hotel building that does not comply with ZR §§ 93-42(a), (b) and (c); and

WHEREAS, a public hearing was held on this application on April 5, 2016, after due notice by publication in *The City Record*, with a continued hearing on May 17, 2016 and then to decision on July 12, 2016; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application subject to the following conditions, which the applicant agreed to by letter dated April 6, 2016: (1) no curb cuts will be located on the site’s West 31st Street frontage; (2) if feasible, at least 2 street trees with 5’ by 10’ tree pits that include planted

shrubs and perennials will be planted along West 31st Street in front of the proposed development; (3) the owner will work with Community Board 4, Manhattan and the Port Authority of New York and New Jersey (“Port Authority”) to gain the Port Authority’s permission to build a sidewalk in the roadway along the Dyer Avenue and West 31st Street frontages and that, pending agreement with the Port Authority, the developer will fund the construction of that sidewalk; (4) the developer will construct the building in accordance with façade elevations dated September 11, 2015, as may be modified in connection with the BSA’s review and approval of the subject variance application; (5) the developer will seek to negotiate a reasonable license agreement for Support of Excavation (SOE) with the adjacent landowner, the Fashion Institute of Technology (“FIT”); (6) there shall be no illuminated signage at the top of the building; (7) the developer will regularly communicate with FIT concerning construction deliveries; (8) the owner will communicate with FIT’s Office of Communications and External Relations regarding move-in and move-out days; and (9) the developer will regularly communicate with the construction manager of the Manhattan West Project; and

WHEREAS, the subject site is comprised of two lots, Lot 55 and Lot 50 (the “Subject Site”), and is located on the south side of West 31st Street, between Dyer Avenue and 9th Avenue, in a C6-4 zoning district, in the Special Hudson Yards District, the Farley Corridor Subdistrict B and the Central Blocks Subarea B2, in Manhattan; and

WHEREAS, Lot 55 has approximately 42 feet of frontage along West 31st Street, 92 feet of frontage along Dyer Avenue and is occupied by a four-story mixed use commercial and residential building that will be demolished for the construction of the project proposed herein; Lot 50, adjacent to and immediately south of Lot 55, has approximately 41 feet of frontage along Dyer Avenue. 20 feet of frontage along a roadway leading to the Lincoln Tunnel (the “Roadway”) and is vacant; and

WHEREAS, the Subject Site has 5,049 sq. ft. of lot area; and

WHEREAS, the applicant proposes to construct a 25-story hotel with 95,906 sq. ft. of floor area (19.0 FAR), a wall height in excess of the maximum permitted pursuant to ZR § 93-42(a), no setbacks, contrary to ZR § 93-42(b), and a floorplate that covers 94.2 percent of the lot area, contrary to the maximum of 70 percent lot area coverage permitted for portions of a building above 150’-0” pursuant to ZR § 93-42(c); and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the Subject Site’s narrow width, limited lot area, and multiple street frontages from which any building thereon must be set back are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, the applicant represents that the Subject Site is the only lot in Central Blocks Subarea B2 and one of

MINUTES

only two lots in the Farley Corridor Subdistrict B with a width of less than 45 feet and lot area of less than 6,000 sq. ft., and that it is the only lot in Farley Corridor Subdistrict B that also has frontages on three streets; and

WHEREAS, the applicant further submits that the Subject Site has a maximum permitted floor area ratio (“FAR”) of 19.0 and that a building compliant with the applicable maximum base height requirements of ZR § 93-42(a), setback requirements of ZR § 93-42(b) and tower lot coverage requirements of ZR § 93-42(c) that also took advantage of the full floor area available at the Subject Site would be 17-stories taller than the current proposal, have substantially higher construction costs and that the limited floor plate of the floors in the tower—the portion of the building above the base height and set back 15’ from the Roadway and 20’ from both Dyer Avenue and West 31st Street—would accommodate fewer rooms per floor because a disproportionate share of those floors would be devoted to the building core; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions at the Subject Site create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant states 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 42-story tower with 95,921 sq. ft. of zoning floor area (the “As-of-Right Development”) and (2) the subject proposal; and

WHEREAS, the applicant represents that only the subject proposal would provide a reasonable return; and

WHEREAS, the As-of-Right Development contains 199 hotel rooms: 11 hotel rooms per floor on the 2nd floor through the 10th floor; amenity space on the 11th and 12th floors; mechanical and storage space on the 13th floor, the first floor of the tower, to allow for the transitioning of the building core to the narrower footprint of the tower floors above; 4 hotel rooms per floor on the 14th-38th floors; and mechanical space on the 39th floor through the 42nd floor; and

WHEREAS, the subject proposal has 220 hotel rooms: mechanical space on the 2nd floor, 11 hotel rooms per floor on the 3rd floor through 22nd floor, mechanical space on the 23rd floor, and hotel amenity space on the 24th and 25th floors; and

WHEREAS, the provided financial analysis indicates that the total development costs for the As-of-Right Development would be \$6,795,000 more than the total development costs for the subject proposal and that the As-of-Right Development does not produce enough income to allow the applicant to realize a positive return while the subject proposal, with 21 more hotel rooms, contains sufficient value to be financially feasible for the applicant; and

WHEREAS, upon review of the applicant’s submissions, the Board has determined that because of the site’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that several hotel, residential and commercial projects are currently in development in the surrounding area, and that the proposed 25-story building would be of a similar height and bulk to these planned developments, as well as those buildings already existing in the area, and therefore 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 detriments to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the Board finds that this action will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, with regards to ZR § 72-21(d), the applicant represents that the metes and bounds of Lot 55 have not changed since at least the enactment of the 1961 Zoning Resolution and that Lot 50 was acquired by the owner in order to combine it with Lot 55 and allowing for a development with a larger floor plate, thus, though the Subject Site was assembled by the owner, the assemblage has had the result, as intended, of lessening the hardship of developing on Lot 55 alone; and

WHEREAS, in light of the above, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, supported by the provided financial analysis, the applicant represents that the capitalized value of the subject proposal is only \$257,000 more than its total development costs, representing a minimally feasible positive return, and, thus, the subject proposal is the minimum needed to provide relief; and

WHEREAS, the Board agrees, in accordance with ZR § 72-21(e), that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment (EAS) CEQR No. 14BSA151M, dated June 8, 2016; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water

MINUTES

and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the Board recommends that an “E” designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, the “E” designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”) which must be satisfied before DOB will issue building permits at the Subject Site; and

WHEREAS, no other significant effects upon the environmental that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in a C6-4 zoning district, the Special Hudson Yards District, the Farley Corridor Subdistrict B and the Central Blocks Subarea B2, the construction of a 25-story hotel building that does not comply with ZR §§ 93-42(a), (b) and (c), *on condition* that all work will substantially conform to drawings filed with this application marked “Received June 8, 2016”- Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: lot coverage of 94.2 percent above the height of 150’ and no setbacks, as indicated on the BSA-approved plans;

THAT an E designation (E-390) is placed on the site to ensure proper hazardous materials remediation;

THAT the above condition shall be listed on the Certificate of Occupancy;

THAT prior to DOB’s issuance of any building permit, OER shall issue a Notice to Proceed or a Notice of No Objection pursuant to the site’s E designation (E-390);

THAT prior to DOB’s issuance of a Certificate of Occupancy, OER must issue a Notice of No Objection or a Notice of Satisfaction;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 12, 2016.

***The resolution has been amended to correct part of the 9th WHEREAS which read and a floorplate that covers 87.4 percent of the lot area, ... Now reads: and a floorplate that covers 94.2 percent of the lot area, ... and 1st THAT which read ... lot coverage of 87.4 percent above the height of 150’ and no setbacks, Now reads: lot coverage of 94.2 percent above the height of 150’ and no setbacks, ... Corrected in Bulletin Nos. 26-27, Vol. 104, dated July 5, 2019.**

BULLETIN

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July 26, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|-----------------------------------|-----|
| DOCKET | 550 |
| CALENDAR of August 6, 2019 | |
| Morning | 551 |
| Afternoon | 552 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, July 16, 2019**

Morning Calendar553

Affecting Calendar Numbers:

| | |
|-----------------------------|--|
| 316-73-BZ | 31-02 68 th Street, Queens |
| 31-91-BZ | 173 Kingsland Avenue aka 635 Meeker Avenue, Brooklyn |
| 62-13-BZ | 2703 East Tremont Avenue, Bronx |
| 418-50-BZ | 73-69 217 th Street; 73-36 Springfield Boulevard; 219-02 74 th Avenue; 73-10 220 th Street, Queens |
| 540-84-BZ | 341 Soundview Avenue, Bronx |
| 132-04-BZ | 310 East Houston Street, Manhattan |
| 90-91-BZ | 630-636 City Island Avenue, Bronx |
| 188-96-BZ | 444 Soundview Avenue, Bronx |
| 194-97-BZ | 84-12 164 th Street, Queens |
| 215-16-A | 144-14 181 st Street, Queens |
| 2017-16-A thru 2017-19-A | 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Queens |
| 2018-105-A | 150-87 Clintonville Court, Queens |
| 2017-310-A | 10002 Farragut Road, Brooklyn |
| 2019-45-A | 10002 Farragut Road, Brooklyn |
| 2018-151-A | 6-05 129 th Street, Queens |
| 2019-1-A thru 2019-5-A | 7, 11, 15, 19, 23 Nello Court, Staten Island |
| 2018-64-BZ & 2018-65-A | 725 Mobile Road, Queens |
| 2017-20-BZ | 550 5 th Avenue, Brooklyn |
| 2018-34-BZ | 102-02 Metropolitan Avenue, Queens |
| 2017-34-BZ | 311 Adams Avenue, Staten Island |
| 2017-244-BZ | 2208 Boller Avenue, Bronx |
| 2018-16-BZ | 974 Sacket Avenue, Bronx |
| 2018-95-BZ | 120 Avenue M, Brooklyn |
| 2018-180-BZ | 1441G South Avenue, Staten Island |

Afternoon Calendar571

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2019-36-BZ | 12 West 21 st Street, Manhattan |
| 2018-67-BZ | 7406 Fifth Avenue, Brooklyn |
| 2018-149-BZ | 230-48 146 th Avenue, Queens |
| 2018-150-BZ | 2215 Homecrest Avenue, Brooklyn |
| 2018-167-BZ | 1133 East 22 nd Street, Brooklyn |

DOCKETS

New Case Filed Up to July 16, 2019

2019-182-A

1 Marina Road, Block 1789, Lot(s) 0065, Borough of **Queens, Community Board: 3**. Appeals application requesting variances from certain requirement of Appendix G – Flood-Resistant Construction of the 2014 New York City Building Code to allow for the reconstruction of the World’s Fair Marina waterfront facilities at Flushing Meadows Park in Queens. Park district.

2019-183-BZ

200 West 41st Street, Block 1012, Lot(s) 7502, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Mayweather Boxing + Fitness) to be located on the third floor of an existing 20-story mixed-use building contrary to ZR §32-10. C6-7 Special Midtown District. C6-7 district.

2019-184-BZ

45-20 83rd Street, Block 1536, Lot(s) 223, 80, Borough of **Queens, Community Board: 4**. Special Permit (§73-19) to permit a school (The Renaissance Charter School) contrary to ZR §42-10. M1-1 zoning district. M1-1 district.

2019-185-A

57 Fletcher Street, Block 2974, Lot(s) 0004, Borough of **Staten Island, Community Board: 1**. Application to permit the construction of two, two-family houses, partially within the bed of a mapped street pursuant to Section 35 of the General City Law. R2A zoning district. R2A district.

2019-186-A

53 Fletcher Street, Block 2974, Lot(s) 0007, Borough of **Staten Island, Community Board: 1**. Application to permit the construction of two, two-family houses, partially within the bed of a mapped street pursuant to Section 35 of the General City Law. R2A zoning district. R2A district.

2019-187-BZ

205 Bricktown Way, Block 7452, Lot(s) 0100, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Hand and Stone Massage and Facial Spa) contrary to ZR 32-10. C4-1 Special South Richmond zoning district. C4-1 district.

2019-188-BZ

1212 East Gun Hill Road, Block 4617, Lot(s) 0040, Borough of **Bronx, Community Board: 11**. Special Permit (§73-243) to permit an eating and drinking establishment (McDonald’s) with an accessory drive-thru contrary to ZR §32-10. C1-2/R5 and R5 zoning district. C1-2/R5 district.

2019-189-BZ

97-01 Northern Boulevard, Block 1427, Lot(s) 0038, Borough of **Queens, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) within a proposed building contrary to ZR §32-10. C2-4R6A zoning district. C2-4(R6A) district.

2019-190-A

40-17 28th Avenue, Block 684, Lot(s) 0001, Borough of **Queens, Community Board: 1**. Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district. R5/C2-2 district.

2019-191-BZ

1485 East 21st Street, Block 7657, Lot(s) 0016, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (FAR and open space ration) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING AUGUST 6, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 6, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

285-52-BZ

APPLICANT – Sheldon Lobel, P.C., for Astoria 34 LLC, owner; Lukoil North America, lessee.
SUBJECT – Application August 30, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 21, 2017; Amendment to permit the conversion of accessory automotive service bays to an accessory convenience store; Waiver of the Board’s rules. R5 Zoning District.
PREMISES AFFECTED – 30-14 34th Avenue, Block 607, Lot 29, Borough of Queens.
COMMUNITY BOARD #1Q

APPEALS CALENDAR

2018-125-A

APPLICANT – Cesare Giaquinto, for 495 Wild Ave, LLC, owner.
SUBJECT – Application July 30, 2018 – Proposed construction of a two-story commercial building for vehicle storage on the ground floor and accessory offices on the second floor not fronting a legally mapped street contrary to General City Law 36. M3-1 zoning district.
PREMISES AFFECTED – 495 Wild Avenue, Block 2705, Lot(s) 49, 50, Borough of Staten Island.
COMMUNITY BOARD #2SI

2019-17-BZY

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.
SUBJECT – Application January 22, 2019 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-6 zoning district.
PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.
COMMUNITY BOARD #5M

2019-175-A

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.
SUBJECT – Application June 18, 2019 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaptation of a zoning text amendment on December 20, 2018. M1-6 zoning district.
PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.
COMMUNITY BOARD #5M

2019-89-A

APPLICANT – City Club of New York, for West 66th Sponsor LLC c/o Extell Development Co., owner.
SUBJECT – Application May 7, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District.
PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #7M

2019-94-A

APPLICANT – Landmark West, for West 66th Sponsor LLC c/o Paul Hastings LLP, owner.
SUBJECT – Application May 13, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7 and R8 Special Lincoln Square District.
PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #7M

CALENDAR

**REGULAR MEETING
AUGUST 6, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 6, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-193-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Brodt and Rina Brodt, owners.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1389 East 22nd Street, Block 7658, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2019-20-BZ

APPLICANT – Law Office of Lyra J. Altman, for Albert Shayek and Sophia Shayek, owners.

SUBJECT – Application January 25, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47). R5 zoning district.

PREMISES AFFECTED – 1933 East 14th Street, Block 7293, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-81-BZ

APPLICANT – Akerman, LLP, for English-Speaking Union of the United States, owner.

SUBJECT – Application April 26, 2019 – Re-instatement (§11-411) of a previously approved variance which permitted office use on the third floor of an existing three-story building which expired on April 8, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Board’s Rules. R6B zoning district.

PREMISES AFFECTED – 144 East 39th Street, Block 894, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #6M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 16, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

316-73-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application November 27, 2018 – Extension of Term of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which is set to expire on January 8, 2019. R4 zoning district.

PREMISES AFFECTED – 31-02 68th Street, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a variance previously granted by the Board, pursuant to ZR § 72-21, which expired on January 8, 2019; and

WHEREAS, a public hearing was held on this application on May 7, 2019, with a continued hearing on July 16, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 68th Street and 31st Avenue, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along 68th Street, 86 feet of frontage along 31st Avenue, 3,755 square feet of lot area and is occupied by an existing one- (1) story automotive service station with accessory office and sales of auto accessories (Use Group (“UG”) 16); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 8, 1974, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the reconstruction of an automotive service station with accessory uses, for a term of 15 years, to expire on January 8, 1989, on condition that all

work substantially conform to drawings filed with the application; no automotive repairs be conducted on the premises; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by January 8, 1975; and

WHEREAS, on July 15, 1975, under the subject calendar number, the Board amended the resolution as to the location of the pump islands and extended the time to obtain permits and complete the work on condition that the pump islands conform to revised drawings of proposed conditions filed with the application; substantial construction be completed within one (1) year, by July 15, 1976; the ice machine be removed from the premises; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on February 27, 1979, under the subject calendar number, the Board further amended the resolution as to the location of the gasoline pumps and extended the time to complete the work on condition that the gasoline pumps conform to revised drawings of proposed conditions; the work be completed within one (1) year, by February 27, 1980; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 27, 1989, under BSA Cal. No. 263-89-A, the Board permitted the use of self-service gasoline pumps at the subject automotive service station on condition that (1) the permit to operate the station be limited to a term expiring on January 8, 1994; (2) a trained attendant who possesses a certificate of fitness, as per the Fire Prevention Code, be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation and be located in an enclosure separated from all other activities by partitions not less than seven (7) feet in height; (3) it be the attendant’s duty to require the engine of any vehicle to shut off before the start of the fuel operation, and to prohibit smoking within the immediate area of the fuel operation; (4) it be the attendant’s duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; (5) signs reading “NO SMOKING,” “STOP YOUR ENGINE,” “IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS,” and “THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER,” be conspicuously posted in clear view of the customer at the dispensing island; (6) the portable fire extinguishers be provided and, in type, quantity and location, be acceptable to the Fire Commissioner; (7) all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the testing laboratory upon which the approval is based; (8) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump and the gauges for the tanks serving the fire suppression system be positioned so as to be easily readable;

MINUTES

(9) the installation and use of coin-operated dispensing devices for fuel be prohibited; (10) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system which is maintained in proper operating condition at all times; (11) all controls, devices, fire suppression systems and fire fighting equipment be maintained in good operating order at all times; (12) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (13) all dispensing nozzles be of the automatic closing type without hold open latches; (14) a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location and said instructions be at the direction of the Fire Commissioner; (15) the dispensing area, at all times, be well lit for complete visual control; (16) all of the conditions set forth in this resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of motor vehicles on the premises; (18) mirrors be provided which ensure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and the switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; (20) the gasoline station be operated in such a manner to minimize traffic congestion; (21) the windows and the glass panels of the control booth remain clear and unobstructed at all times; and on further condition that the building, equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within one (1) year, by June 27, 1990; and, all applicable laws, rules and regulations be complied with; and

WHEREAS, on June 27, 1989, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire on January 8, 1999, in conjunction with a change to self-service gasoline station in accordance with the conditions of the resolution granted under BSA Cal. No. 263-89-A, to permit the erection of a new steel canopy over three (3) new multiple product dispenser ("MPD") self-serve pumps, and to alter the existing accessory building by removing a portion so as to accommodate an attendants booth, on condition that the premises conform to revised drawings of proposed conditions filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by June 27, 1990; and

WHEREAS, on June 26, 1990, under the subject calendar number, the Board further amended the resolution to permit a relocation of the existing 30-foot curb cut on the 68th Street side of the station, substantially as shown on revised plans of proposed conditions filed with the application, and extended the time to obtain a certificate of

occupancy for one (1) year, by June 27, 1991, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on July 27, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance for ten (10) years, to expire on January 8, 2009, on condition that no used car sales of any kind take place on the premises; the premises remain graffiti free at all times; no vehicles be parked on sidewalks or in such a manner as to obstruct pedestrian or vehicular traffic; all signs be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 27, 2000; and

WHEREAS, on April 21, 2009, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on January 8, 2019, on condition that all use and operations substantially conform to drawings filed with the application; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by October 21, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, the Department of Buildings ("DOB") ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired on January 8, 2019, the applicant seeks a ten- (10) year extension of the term; and

WHEREAS, at hearing, the Board raised concerns regarding the potential of disturbances to the adjacent residential building created from vending machines, a rooftop HVAC unit and lighting at subject site; and

WHEREAS, in response, the applicant agreed to shield the lighting on the site to ensure zero (0) light levels on the adjacent residential property and install sound attenuating material around the rooftop HVAC unit, but represented, in satisfaction of the Board, that the adjacent overpass of the Brooklyn Queens Expressway presents a greater noise impact to the adjoining residential uses than the occasional noise and potential disturbance from the vending machines, and there has been no evidence submitted into the record that the vending machines disturb the adjacent residences; and

WHEREAS, by letter dated July 10, 2019, the Fire Department states that a review of Department records indicates that the subject site is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system, and the Department has no objection to the Board rendering a decision on the application, as the

MINUTES

Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, the Board finds that ten- (10) year extension of the term of the variance, originally granted in 1974, is appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated January 8, 1974, as amended through April 21, 2009, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on January 8, 2029, *on condition* that all work and site conditions shall comply with drawings filed with this application marked “July 3, 2019”-Four (4) sheets; and *on further condition*:

THAT the term of the variance shall expire January 8, 2029;

THAT shields shall be installed and maintained on the lights to ensure a level of zero (0) lumens at the property line;

THAT adequate sound attenuating material shall be installed and maintained around HVAC equipment to ensure sound levels comply with the New York City Noise Control Code;

THAT no used car sales of any kind shall take place on the premises;

THAT the premises shall remain graffiti free at all times;

THAT no vehicles shall be parked on sidewalks or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT all signs be shall be maintained in substantial compliance with the BSA-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 316-73-BZ”), shall be obtained within one (1) year, by July 16, 2020;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 16, 2019.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.
SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012; Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn; certificate of occupancy modified.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an amendment, and an extension of term of a variance, previously granted by the Board, which expired on July 28, 2012; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 16, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Kingsland Avenue and Meeker Avenue, partially in an R6 zoning district and partially in an R8B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 83 feet of frontage along Kingsland Avenue, 37 feet of frontage along Meeker Avenue, 4,503 square feet of lot area and is occupied by a one-story commercial building used as an eating or drinking establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 28, 1992, when, under the subject calendar number, the Board granted a variance for a term of twenty (20) years, expiring July 28, 2012, to permit a one-story enlargement to an existing non-conforming eating or drinking establishment (Use Group 6) that increased the degree of nonconformance on condition that all garbage be stored inside the building until immediately prior to the time of pick-up; that the site be kept clean and free of debris; that all signs comply with C1 zoning district regulations; that street trees be planted and maintained in accordance with the Board-approved drawings; that no mechanical equipment be placed on the roof of the new addition; and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant

MINUTES

now seeks a waiver of the Board's Rules of Practice and Procedure, an amendment, and an extension of term; and

WHEREAS, by letter dated May 28, 2019, the applicant requests withdrawal of this application, stating that the commercial tenant has vacated, that the applicant no longer wishes to continue commercial use at 173 Kingsland Avenue and will conform the site to residential use, and that the building at 635 Meeker Avenue has a separate certificate of occupancy for commercial use as of right and will continue to be used for commercial use; and

WHEREAS, accordingly, the applicant seeks to relinquish the subject variance and proceed as of right in accordance with all applicable zoning regulations; and

WHEREAS, based upon its review of the record, the Board has determined that the requested withdrawal appropriate with certain modifications to the certificate of occupancy set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* the applicant's request to withdraw this application and does hereby *modify* the certificate of occupancy issued pursuant to BSA Calendar Number 31-91-BZ for 635 Meeker Avenue and 173 Kingsland Avenue, Brooklyn (Block 2705, Lot 34), so that as amended there shall be no reference to eating or drinking establishment being permitted on Lot 34.

Adopted by the Board of Standards and Appeals, July 16, 2019.

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 2703 East Tremont LLC, owner; BXC Gates, LLC, lessee.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the legalization of an eating and drinking establishment (Wendy's) with an accessory drive-through facility which expires on July 9, 2018. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, Blok 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a special permit, previously granted pursuant to ZR § 73-243, which expired on July 9, 2018; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with continued hearings on December 11, 2018, May 7, 2019, and June 16, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, the Bronx, recommends approval of this application; and

WHEREAS, the subject site is bound by East Tremont Avenue to the south, St. Raymond Avenue to the west and Williamsbridge Road to the east, in an R6 (C1-2) zoning district and Lower Density Growth Management Area (“LDGMA”), in the Bronx; and

WHEREAS, the site has approximately 138 feet of frontage along East Tremont Avenue, 188 feet of frontage along St. Raymond Avenue, 100 feet of frontage along Williamsbridge Road, 18,487 square feet of lot area and is occupied by an existing one- (1) story eating and drinking establishment (2,772 square feet of floor area) with accessory drive-through; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1985, when, under BSA Cal. No. 88-85-BZ, the Board granted a special permit, pursuant to ZR § 73-243, to permit the installation of a drive-through facility for a proposed restaurant on condition that all work substantially conform to plans as they apply to the objection, filed with the application; the special permit be limited to a term of five (5) years, to expire on October 22, 1990; the owner comply with the conditions set forth in the conditional negative declaration; landscaping be provided as shown on plans and be adequately maintained and replaced when necessary; the hours of operation be limited to 6:00 a.m. to 11:00 p.m., Sunday through Thursday, and 6:00 a.m. to 12:00 a.m. midnight, Friday and Saturday; the parking area be locked when the premises are not in operation; the Department of Buildings (“DOB”) issue no permits for a period of 31 days from the date of the resolution; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70, by October 22, 1989; and

WHEREAS, on May 14, 1991, under BSA Cal. No. 88-85-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on October 22, 1995, on condition that the premises conform with the revised plans of proposed conditions; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by May 14, 1992; and

WHEREAS, on July 9, 2013, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, to legalize the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group (“UG”) 6), contrary to ZR § 32-10, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the term of the grant

MINUTES

expire on July 9, 2018; the premises be maintained free of debris and graffiti; parking and queuing space for the drive-through be provided as indicated on the BSA-approved plans; all landscaping and/or buffering be maintained as indicated on the BSA-approved plans; exterior lighting be directed away from the nearby residential uses; all signage conform to C1-2 zoning district regulations; the above conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that the subject site continues to be operated as “Wendy’s” and is open from 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and from 10:00 a.m. to 3:00 a.m. on Friday and Saturday; and

WHEREAS, over the course of hearings, the Board expressed concerns over the sufficiency and adequacy of landscaping at the site and requested that the landscaping be provided to effectively create buffers between the subject site and adjacent uses as well as be designed so as to prevent it from being trampled or damaged; and

WHEREAS, in response the applicant provided photographs demonstrating planting areas with wheel stops and pickets to protect the planted areas in satisfaction of the Board; and

WHEREAS, by letter dated September 28, 2018, the Fire Department states that a review of their records indicates that the subject site is current with its permits for public assembly, rangehood suppression system and the storage of liquid gases, and the Fire Department has no additional comments or recommendations relative to the application; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a five (5) year extension of term is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated July 9, 2013, so that, as amended, this portion of the resolution reads: “to permit an extension of term for five (5) years, to expire on July 9, 2023, *on condition* that the use and operation of the site shall conform to plans filed with this application marked ‘Received, April 19, 2019’- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 9, 2023;

THAT the premises shall maintained free of debris and graffiti at all times;

THAT fencing and landscaping shall be maintained as indicated on the BSA-approved plans and shall be replaced as necessary to maintain them in first-class condition;

THAT the asphalt shall be resurfaced as needed;

THAT trash shall be maintained in an enclosure;

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the nearby residential uses;

THAT all signage shall conform to C1-2 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 62-13-BZ”) shall be obtained within one (1) year, by July 16, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 16, 2019.

418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application September 12, 2017 – Compliance Hearing.

PREMISES AFFECTED – 73-69 217th Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74th Avenue (Block 7754, Lot 3); 73-10 220th Street (Block 7755, Lot 3), Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for decision, hearing closed.

90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming use with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment is for a modification of the interior layout and sizes of the commercial units, and a modification in the number of accessory parking spaces from the previous approval; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

188-96-BZ

APPLICANT – Eric Palatnik, P.C., for William McCombs, owner.

SUBJECT – Application November 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on January 6, 2018; Amendment (§11-412) to permit the enlargement of the accessory building, provide new pump islands and install a canopy; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corp., owner; Quick Stop Auto Repair Inc., lessee.

SUBJECT – Application March 9, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of an automotive repair facility and auto sales (Use Group 16B) which expired on November 29, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on July 20, 2010; Waiver of the Board’s Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, Block 9792, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

215-15-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Farhad Bokhour, owner.

SUBJECT – Application September 1, 2015 – Proposed construction of a two story two family dwelling (U.G. 2), located within the bed of a mapped street contrary to Article 3, Section 35, of the General City Law, within an R3A zoning district.

PREMISES AFFECTED – 144-14 181st Street, Block 13089, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 27, 2015, acting on New Building Application No. 420816503, reads in pertinent part:

MINUTES

Proposed two story two family dwelling is in the bed of a mapped street. Comply with Section 35 of the General City Law, refer to the Board of Standards and Appeals for an Administrative Appeal; and

WHEREAS, this is an application to permit the construction of a building within the bed of a mapped street, contrary to General City Law (“GCL”) § 35; and

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, with continued hearings on January 29, 2019, and July 16, 2019, and then to decision on that date;

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of 181st Street, between 144th Avenue and North Conduit Avenue, in an R3A zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along 181st Street, 4,707 square feet of lot area and is currently vacant; and

WHEREAS, the site is partially located within the bed of 144th Road, a street between Farmers Boulevard and 181st Street and mapped to a width of 60 feet, but unimproved west of the subject site and not in use; and

WHEREAS, the applicant proposes to develop the existing lot with a new two- (2) story two- (2) family dwelling within the bed of a mapped, but unimproved portion of 144th Road; and

WHEREAS, the applicant submits that the proposed two- (2) family dwelling will comply and conform with all applicable provisions of the Zoning Resolution, including but not limited to those relating to yard requirements, permitted height and required off-street parking; and

WHEREAS, by letter dated April 16, 2018, the New York City Department of Environmental Protection (“DEP”) states that the applicant provided a topographical survey, dated August 31, 2017, that shows the distance of 155.5 feet from the terminal manholes of the ten- (10) inch diameter sanitary sewer and the distance of 407 feet from the fire hydrant on the six- (6) inch diameter City water main to the lot line of lot 56 in 144th Road; in addition, the applicant submitted a revised site plan of proposed conditions, dated February 7, 2018 (the “Site Plan”), that shows part of the 60-foot wide easement on the property between 181st Street and Farmers Boulevard; in addition, the letter describes the proposed 35-foot wide sewer corridor/easement in lot 56 and adjacent lot 62, shown on the Site Plan; adjacent lot 62 is not part of this application; as per New York City Department of Finance (“DOF”), lots 56 and 62 are owned by different owners; the proposed sewer corridor/easement must be within lot 56 and must be as requested by DEP; and, DEP requires the applicant to submit a survey/plan showing the 35-foot wide sewer corridor/easement for the installation and/or reconstruction of the future sewers, or the applicant has the

option to amend the drainage plan; and

WHEREAS, the applicant represented that the construction of a 35-foot sewer corridor would result in a very narrow home with a width of 15 feet and requested to revise the drainage plan; and

WHEREAS, by letter dated February 7, 2019, DEP states that, based on DEP maps, sewers and water mains do not cross the subject property and there is a ten- (10) inch diameter sanitary sewer and a six- (6) inch diameter City water main in the bed of 144th Road, outside of the limits of lot 56; the Amended Drainage Plan South East Queens Part 1, Sheet 33 of 33, dated May 15, 2008, for the subject site, calls for a future ten- (10) inch diameter sanitary and 24-inch diameter storm sewers in the bed of 144th Road between 181st Street and Farmers Boulevard; the applicant submitted a letter, dated January 25, 2019, and a site plan, along with the request to amend the drainage plan; the request to amend the drainage plan included tributary area plan and hydraulic calculations within 144th Road; DEP’s Drainage and Modeling found that the plans and information submitted by the applicant are sufficient to amend the drainage plan; and, based on the above, DEP has no objection to the subject application; and

WHEREAS, by letter dated February 21, 2017, the New York City Department of Transportation (“DOT”) states that, according to the Queens Borough President’s Topographical Bureau, 144th Road at this location is mapped for 60 feet and the City does not have title; they reviewed all pertinent documents submitted to DOT and the improvement of 144th Road at this location, which would include a taking of tax block 13089, lot 56, is not presently included in DOT’s Capital Improvement Program, but this does not preclude a change in the program in the future; and

WHEREAS, by letter dated January 30, 2017, the Fire Department states that they reviewed the subject application and, provided the City has no intention of acquiring the property that forms the unbuilt portion of the mapped street, they have no objection to the subject application, provided the building is fully sprinklered on all floors; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of a mapped street subject to reasonable requirements; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore, it is Resolved, that the Board of Standards and Appeals modifies the decision of the Department of Buildings, dated August 27, 2015, acting on New Building Application No. 420816503, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decisions noted above *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received July 10, 2019”-One (1) sheet; and *on further condition:*

THAT the drainage plan shall be amended to meet New York City Department of Environmental Protection approval;

THAT the building shall be fully sprinklered, as per BSA-approved plans;

MINUTES

THAT a certificate of occupancy, also indicating this approval and calendar number (BSA Cal No. 215-15-A), shall be obtained within four (4) years, by July 16, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2019.

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application December 1, 2017 – Pursuant to § 645 of the New York City Charter, the Department of Buildings (the "Department") respectfully submits to the Board of Standards and Appeals (the "Board") this statement in support of its application to modify certificate of occupancy 321114450F dated September 1, 2015.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for adjourned hearing.

2019-45-A

APPLICANT – Cozen O'Connor for FMA Farragut Road LLC, owner.

SUBJECT – Application March 15, 2019 – Appeal of the DOB interpretation (dated 1/31/2019) that motor freight station for regulated medical waste use at the premises constitutes a UG 18 use pursuant to ZR § 42-15 and seeks the Board's confirmation that such use constitutes a UG 16 use pursuant to ZR § 32-25.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for decision, hearing closed.

2018-151-A

APPLICANT – Eric Palatnik, P.C., for College Realty Corp., owner.

SUBJECT – Application September 18, 2018 – Application to permit the development of a three story, 24-unit residential building on a lot that is located partially in the bed of a mapped but unbuilt portion of a street contrary to General City Law §35. R3-2 and R3-1 zoning districts.

PREMISES AFFECTED – 6-05 129th Street, Block 3959, Lot 13, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2019-1-A thru 2019-5-A

APPLICANT – Joseph Loccisano of Sanna & Loccisano Architects, P.C., for Nello Development Corporation, owners.

SUBJECT – Application January 4, 2019 – Proposed construction of five (5) two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 7, 11, 15, 19, 23 Nello Court, Block 7826, Lot Tent. 215, 216, 217, 218, 220, Borough Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

MINUTES

ZONING CALENDAR

2016-4153-BZ

CEQR #16-BSA-100K

APPLICANT – Eric Palatnik, P.C., for Congregation Zichron Yehuda, owner.

SUBJECT – Application March 30, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Project Witness*) contrary to floor area ratio and lot coverage (§24-34), front yard (§24-34) and side yard (§24-35(a)). R5 zoning district.

PREMISES AFFECTED – 4701 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 15, 2016, acting on New Building Application No. 320919501, reads in pertinent part:

1. Proposed plans are contrary to ZR 24-11 in that the proposed floor area ratio (FAR) exceeds the permitted . . .
2. Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is greater than the maximum permitted . . .
3. Proposed plans are contrary to ZR 24-34 in that the subject corner property only proposes one front yard at 10’-0” . . .
4. Proposed plans are contrary to ZR 24-35(a) in that the subject corner property only proposes one side yard at 14’-2” . . .
5. Proposed plans are contrary to ZR 24-521 in that the proposed building height exceeds the maximum permitted height . . . ; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R5 zoning district, the enlargement of an existing building that would not comply with zoning regulations for floor area, lot coverage, front yards, side yards and building height, contrary to ZR §§ 24-11, 24-34, 24-35(a) and 24-521; and

WHEREAS, this application has been brought on behalf of the Project Witness Holocaust Education and Resource Center (the “Educational Facility”); and

WHEREAS, a public hearing was held on this application on November 14, 2017, after due notice by publication in *The City Record*, with continued hearings on February 13, 2018, May 1, 2018, August 7, 2018, October 23, 2018, February 26, 2019, and June 4, 2019, and then to decision on July 16, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, New York State Senator Simcha Felder, New York State Assembly Member Steven H. Cymbrowitz, New York State Assembly Member Simcha Eichenstein, New York City Council Member David G. Greenfield, New York City Council Member Chaim M. Deutsch, New York City Council Member Mark D. Levine, New York City Council Member Kalman Yeger and local residents and organizations submitted testimony in support of this application, and some local residents submitted testimony in opposition to this application, citing traffic and neighborhood-character concerns; and

WHEREAS, the subject site is located at the southeast corner of 19th Avenue and 47th Street, in an R5 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 22 feet of frontage along 19th Avenue, 105 feet of frontage along 47th Street, 2,322 square feet of lot area and is occupied by a two-story, including basement, community-facility building; and

WHEREAS, the applicant proposes to enlarge the existing building to a four-story, including basement, community-facility building with a total of 7,452 square feet of floor area (3.21 FAR), lot coverage of 82 percent, a front yard with a depth of 10’-0” along 19th Avenue, a side yard with a width of 6’-0” perpendicular to 47th Street and a building height of 38’-4”;

WHEREAS, the applicant submits that, at the subject site, a community-facility building may have a maximum of 4,629 square feet of floor area (2.0 FAR) under ZR § 24-11, lot coverage may not exceed 60 percent under ZR § 24-11, corner lots must have two front yards with minimum depths of 10 feet under ZR § 24-34, corner lots must have two side yards with minimum depths of 11 feet under ZR § 24-35(a) and buildings may not exceed 35 feet in height under ZR § 24-521; and

WHEREAS, the applicant submitted evidence that, in fulfilling its educational mission, the Educational Facility partners with numerous other educational institutions, including the City’s public school system, to provide instruction and programs that comply with the New York State Department of Education’s curricular requirements as well as college-level curricula; and

WHEREAS, the Board acknowledges that the Educational Facility, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety or welfare of the community, and general

MINUTES

concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, the applicant represents that the Educational Facility's programmatic needs create practical difficulties or unnecessary in complying strictly with applicable zoning regulations; and

WHEREAS, in support of this contention, the applicant submitted a study detailing the Educational Facility's programmatic requirements (the "Programmatic Needs Report"); and

WHEREAS, the Programmatic Needs Report demonstrates that the existing building is insufficient to meet the Educational Facility's program, which requires two classrooms, an archive, a library, interview and webinar spaces and an auditorium to be consolidated into one building in order to provide crucial adjacencies between the program's educational elements; and

WHEREAS, the applicant submits that, because of the narrowness of the subject site, an as-of-right development would consist of a community-facility building with a width of 4'-0" and a length of 86'-2", which could not possibly meet the Educational Facility's programmatic needs; and

WHEREAS, instead, the applicant notes that the proposed building would fulfill the Educational Facility's program by locating a conference room and exhibition space with webinar space and an interview room adjacent to an open office space in the basement; an auditorium, a research area and administrative office on the first floor; two classrooms on the second floor; and a library and archives on the third floor; and

WHEREAS, the Board finds that the Educational Facility's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because the Educational Facility is a non-profit organization and the proposed building is needed to further its programmatic mission, demonstrating that the proposed variance is necessary to realize a reasonable return from the subject site is unnecessary; and

WHEREAS, the applicant submits that the proposed building would not alter the character of the surrounding area, impair the use of neighboring properties or be detrimental to the public welfare; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area and submitted a study demonstrating that there are a number of buildings in the vicinity with 2.4 FAR to 4.0 FAR and heights ranging from 36 feet to 81 feet; and

WHEREAS, the applicant notes that the property immediately to the rear of the subject site is occupied by a manufacturing building with full lot coverage and that the adjacent site would be occupied by another community-facility building, neither of which would be adversely affected by the proposed building's height or yards; and

WHEREAS, additionally, the applicant submitted a photographic streetscape study and aerial views demonstrating that the proposed building will comport with the built character of the surrounding area; and

WHEREAS, with respect to traffic and in response to community concerns, the applicant provided a report demonstrating that the maximum number of trips would be on Fridays from 12:00 p.m. to 1:00 p.m. with a total of 107 persons, which would result in a total of 2-3 buses visiting the subject site during periods of peak demand, that a number of the Educational Facility's affiliated institutions are located within walking distance and that the applicant's proposal would not have any significant adverse effects on traffic; and

WHEREAS, in response to community concerns and questions from the Board regarding the possibility of providing an open stair and reducing the incursion of the proposed building into required yards, the applicant submitted evidence demonstrating that a second means of egress must be enclosed in order to comply with the New York City Building Code; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship—notwithstanding common ownership of the subject site with an adjacent property; and

WHEREAS, the applicant posits that the Board has no authority to consider common ownership of adjacent property in this application and attempts to characterize the Board's inquiry as turning on the ZR § 12-10 "zoning lot" definition; and

WHEREAS, however, the Zoning Resolution vests the Board with wide discretion under ZR § 72-21 and authorizes the Board to prescribe conditions and safeguards to address a variance's potential adverse effects under ZR § 72-22, so the Board's review of this application need not be confined to the standards applicable to as-of-right construction; and

WHEREAS, the applicant has presented no court decision standing for the proposition that the Board may not consider self-created hardship in this application, especially where an educational institution refuses to consider alternative design solutions that would potentially mitigate impacts on the surrounding area; and

WHEREAS, to the contrary, in *Pine Knolls All. Church v. Zoning Bd. of Appeals of Town of Moreau*, 5 N.Y.3d 407, 414 (2005), the Court of Appeals of New York held that a zoning board's denying a house of worship the exact expansion sought "was not a denial of permission to expand" but rather "the functional equivalent of imposing mitigating conditions on the grant of an application—a practice explicitly approved in *Cornell University*"; and

WHEREAS, *Cornell University v. Bagnardi*, 68

MINUTES

N.Y.2d 583, 594 (1986), itself explicitly overturned court decisions “demand[ing] a full exemption from zoning rules for all educational and church uses” that effectively “render[ed] municipalities powerless in the face of a religious or educational institution’s proposed expansion, no matter how offensive, overpowering or unsafe to a residential neighborhood the use might be”; and

WHEREAS, accordingly, it is appropriate for the Board to consider the issue of self-created hardship in this application; and

WHEREAS, in support of the contention that common ownership of an adjacent property does not create the above practical difficulties or unnecessary hardship, the applicant revised the Programmatic Needs Report to demonstrate why the Educational Facility’s program could not be addressed by merging the subject site with the adjacent site and developing a larger building with the Educational Facility and a house of worship as two separate principal uses; and

WHEREAS, the Programmatic Needs Report analyzes four scenarios: merging the subject site with the adjacent site and developing an as-of-right community-facility building; merging the subject site with the adjacent site and developing a community-facility building that would not comply with zoning regulations for floor area, height, front yards and side yards; merging the subject site with the adjacent site and developing a community-facility building that would not comply with zoning regulations for floor area, height and front yards; and the proposed scenario (maintaining the subject site as a separate zoning lot from the adjacent site and developing each independently); and

WHEREAS, the applicant states that merging the subject site and developing an as-of-right community-facility building would not meet the Educational Facility’s programmatic needs because a combined zoning lot would have 43’-6” of frontage along 19th Avenue, 105’-2” of frontage along 47th Street, two front yards with depths of 10’-0” each, side yards with widths of 8’-9” and 8’-0” and a building with a width of 25’-6” and a length of 86’-0”—a building that could not accommodate the programmatic needs of both the Educational Facility and a house of worship; and

WHEREAS, the applicant notes that merging the subject site with the adjacent site would potentially implicate self-created hardship because the subject site is a corner lot, which requires two front yards and two side yards, and the adjacent site is an interior lot, which requires a rear yard; and

WHEREAS, by merging the subject site with the adjacent site, the combined zoning lot would become one corner lot, removing any rear yard requirement—a problematic proposition because portions of community-facility buildings are allowed to obstruct rear yards under ZR § 24-33; and

WHEREAS, the applicant accordingly asserts that merging the subject site with the adjacent site would eliminate the ability of the adjacent site to build into its rear yard as of right; and

WHEREAS, the applicant further notes that the Programmatic Needs Report demonstrates that the second and third scenarios would not alleviate any of the above practical difficulties or unnecessary hardship and would instead exacerbate these conditions such that locating the Educational Facility and a house of worship in the same building would be detrimental to both uses—and, crucially, would result in a taller, larger building with increased non-compliance in order to support their programmatic needs because of duplicative space required to separate the uses in a secure manner; and

WHEREAS, the applicant notes that, based on these considerations, the Programmatic Needs Report amply supports its position that the above practical difficulties or unnecessary hardship were not self-created; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant submits that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the Programmatic Needs Report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA100K, dated July 15, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated February 1, 2018, the New York City Landmarks Preservation Commission states that the proposed project would not result in any potential for significant adverse effects with respect to architectural or archaeological resources; and

WHEREAS, by letter dated March 18, 2019, the New York City Department of Environmental Protection (“DEP”) states that an (E) designation for hazardous materials shall be assigned to the subject properties to ensure that testing and mitigation will be provided as necessary before any future development or soil disturbance and that further hazardous materials assessments shall be coordinated through the Mayor’s Office of Environmental Remediation; and

WHEREAS, by correspondence dated July 11, 2017, DCP states that an (E) designation for hazardous materials

MINUTES

(No. E-543) has been assigned to the subject properties; and

WHEREAS, by letter dated March 19, 2019, DEP states that the proposed project would not result in any potential for significant adverse impacts with respect to air quality and that the proposed project would not result in any potential for significant adverse impacts with respect to noise on condition that a composite window-wall attenuation noise attenuation of 28 dBA shall be required for all building facades and that an alternate means of ventilation shall be required and incorporated into the building design and construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R5 zoning district, the enlargement of an existing building that would not comply with zoning regulations for floor area, lot coverage, front yards, side yards and building height, contrary to ZR §§ 24-11, 24-34, 24-35(a) and 24-521; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received February 7, 2019”-Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 7,452 square feet of floor area (3.21 FAR), maximum lot coverage of 82 percent, a front yard with a minimum depth of 10’-0” along 19th Avenue, a side yard with a minimum width of 6’-0” perpendicular to 47th Street and a maximum building height of 38’-4”, as illustrated on the Board-approved drawings;

THAT use of the subject site (Lot 165) shall remain separate from the adjacent site (Lot 166) in perpetuity and the sites shall not be combined;

THAT a composite window-wall attenuation noise attenuation of 28 dBA shall be required for all building facades;

THAT an alternate means of ventilation shall be required and incorporated into the building design and construction;

THAT an (E) designation for hazardous materials (No. E-543) shall be placed on the subject properties to ensure that testing and mitigation be provided as necessary before any future development or soil disturbance and that further hazardous materials assessments shall be coordinated

through the Mayor’s Office of Environmental Remediation;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2016-4153-BZ”), shall be obtained within four (4) years, by July 16, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2019.

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 18, 2018, acting on New Building Application No. 421605427, reads in pertinent part:

1. ZR24-111a/11: Proposed plans are contrary to ZR24-111a/11 in that the FAR exceeds the maximum permitted.
2. ZR24-521: Proposed plans are contrary to ZR24-521 in that the building height/setback exceeds maximum permitted.
3. ZR25-31/32: Proposed plans are contrary to ZR25-31/32 in that the parking not in compliance

MINUTES

4. ZR24-34/35/36: Proposed plans are contrary to ZR24-34/35/36 in that the front/side/rear yards not in compliance; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R2X zoning district, the development of a two-story, with cellar, community-facility building for use as a house of worship (Use Group 4) that does not comply with zoning regulations for FAR, lot coverage, maximum wall height, side yards, rear yards, front yards, or parking, contrary to ZR §§ 24-111, 24-11, 24-521, 24-35(a), 24-36, 24-34, 25-31, and 25-32, and this is an application under General City Law § 35 to build within the bed of Mobile Road, a mapped street; and

WHEREAS, this application is brought on behalf of Kehilas Bais Yisroel, the contract vendee and a not-for-profit religious organization; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, with continued hearings on January 8, 2019, February 26, 2019 and April 23, 2019, and then to decision on July 16, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on Mobile Road, between Reads Lane and Cornaga Avenue, in an R2X zoning district, in Queens; and

WHEREAS, the subject site has approximately 13,089 square feet of lot area, including 7,725 square feet proposed to be subdivided for Lot 22 and 5,364 proposed to be subdivided for Lot 13, and is occupied by a one-family residence with approximately 3,734 square feet of floor area; and

WHEREAS, the applicant proposes to develop a two-story, with cellar, community-facility building for use as a house of worship (Use Group 4) with 7,477 square feet of floor area (1.39 FAR after subdivision), a front yard with a depth of 5 feet, side yards with depths of 2 feet and 6 feet, a rear yard with a depth of 5 feet, a building-wall height of 27 feet, and no parking spaces; and

WHEREAS, at hearing, the Board questioned the appropriateness of the current owner's proposal to subdivide the subject site into two zoning lots and questioned whether this would constitute a self-created hardship; and

WHEREAS, in response, the applicant briefed case law regarding deference to religious and educational institutions but provided no support for the proposition that a house of worship or a predecessor in title may create the practical difficulties or unnecessary hardship claimed as the basis for a variance, see ZR § 72-21(d); and

WHEREAS, accordingly, the applicant requests withdrawal of this application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant the applicant's request to withdraw this application*.

Adopted by the Board of Standards and Appeals, July 16, 2019.

2017-20-BZ

CEQR #17-BSA-070K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – Variance (§72-21) to permit legalization of a Physical Cultural Establishment (*Harbor Fitness*) on a portion of the cellar and first floors contrary to ZR §§22-10 & 32-10. R6B & C4-3A zoning district.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 20, 2016, acting on of the Department of Buildings (“DOB”) Application No. 321048451, reads in pertinent part:

Proposed physical culture establishment (PCE) not permitted as of right in R6B and C4-3A zoning districts per ZR 22-10 and ZR 32-10, therefore approval from Board of Standards and Appeals required to allow proposed PCE use; and

WHEREAS, this is an application under ZR § 72-21 to legalize, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the operation of a physical culture establishment (“PCE”) contrary to ZR §§ 22-10 and 32-10; and

WHEREAS, a public hearing was held on this application on July 17, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 16, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was also in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the northwest corner of Fifth Avenue and 15th Street, partially within an R6B zoning district and partially within a C4-3A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 75 feet of frontage along Fifth Avenue, 218 feet of frontage along 15th Street, 20,373 square feet of lot area and is occupied by an existing three- (3) story plus cellar mixed-use commercial and residential building; and

MINUTES

WHEREAS, the Board has exercised jurisdiction over the subject site since October 3, 2000, when, under BSA Cal. No. 11-00-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE on portions of the cellar and first floor of an existing mixed-use building on condition that all work substantially conform to plans as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the hours of operation be limited to Monday to Friday, 6:00 a.m. to 12:00 a.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; all individuals practicing massage at the premises possess valid New York State licenses for such practice which licenses be prominently displayed at the premises; fire protection measures, including a fire alarm system, a smoke detection system, and an automatic wet sprinkler system, all connected to a Fire Department-approved central station, be provided and maintained; the special permit be limited to a term of ten (10) years, to expire on October 3, 2010; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed and a new certificate of occupancy be obtained within two (2) years, by October 3, 2002; and

WHEREAS, on or around April 30, 2003, the subject site was rezoned as part of the Park Slope Rezoning, replacing the C4-3 zoning district with a C4-3A zoning district, and reducing the distance by which the commercial district extended from Fifth Avenue, from 200 feet to 100 feet, resulting in a portion of the PCE existing in an R6B zoning district, wherein a special permit pursuant to ZR § 73-36 is not available; thus, the applicant seeks the subject relief; and

WHEREAS, a subsequently filed application, under the subject calendar number, for an extension of term of the special permit, was withdrawn when it was determined that the application could not proceed due to the Park Slope Rezoning; and

WHEREAS, the existing PCE, which continues to operate as Harbor Fitness, occupies 8,947 square feet of floor area on the first floor with the PCE entrance and areas for reception, offices, training, warm-up and cardio exercises; and 9,905 square feet of floor space in the cellar with locker rooms with saunas, restrooms and showers, and weight training areas; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, the applicant submits that, pursuant to ZR § 72-21(a), the history of PCE use at the site since 2000 and the excessive cost of renovating the space to permit a conforming commercial use are physical conditions that create a practical difficulty in complying with the existing

zoning regulations because such compliance would require costly renovations to the commercial unit in which the PCE is now located and the current configuration of the space would further frustrate as-of-right uses; and

WHEREAS, the applicant submits that the PCE has continuously operated at the site since the special permit approval in 2000; and

WHEREAS, with regards to the hardship involved with configuring the space for an as-of-right use, which the applicant anticipates would require the creation of smaller rooms throughout the existing space, the applicant represents that renovation of the subject PCE space is frustrated by low ceilings, immovable support columns and a lack of an internal elevator, representing significant construction costs to a potential commercial tenant, and, further, the building’s slope of the street and side street entrance, as opposed to the main commercial thoroughfare of Fifth Avenue, are factors that make the site less attractive to potential tenants and patrons; and

WHEREAS, the Board finds that the history of the use of the site, in part, as a PCE and physical layout of the existing space are unique conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with applicable zoning regulations; and

WHEREAS, in satisfaction of ZR § 72-21(b), the applicant states that there is no reasonable possibility that a conforming development at the site will bring a reasonable return and, in support of that contention, submitted financial analyses for (1) an as-of-right commercial use (the “AOR Scenario”) and (2) the subject legalization; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject legalization will generate a reasonable return, in line with the minimum desirable return expected from comparable development, while the AOR Scenario, requiring a conversion of the existing PCE space to a “vanilla box” without on-site parking or a tenant yet identified, would result in a return below the minimum feasible; and

WHEREAS, upon review of the record, the Board finds, in accordance with ZR § 72-21(b), that due to the history of the PCE use at the site and the site’s unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant submits that the subject legalization will not substantially impair the appropriate use or development or adjacent properties and will not be detrimental to the public welfare in accordance with ZR § 72-21(c); specifically, the PCE is wholly contained within an existing building on a busy commercial thoroughfare, has operated at the site continuously for about two (2) decades and the PCE use is consistent with other commercial uses and mixed-use buildings in the area, which, primarily, are residential buildings with commercial uses on lower floors; and

WHEREAS, by letter dated July 11, 2018, the Fire Department states that the fire alarm system and sprinkler

MINUTES

systems have been inspected by units in the Bureau of Fire Prevention and found to be satisfactory; the Licensed Public Place of Assembly unit (“LPPA”) visited the subject site and issued violation order #E499048 for failure to obtain an operating permit; the Fire Department recommends that the Board render a decision on the application; and, if approval is given for this application, the Fire Department will enforce the violation order if found that the applicant of record fails to obtain approvals of the Alteration Type I (Alt. I # 321048451) and Place of Assembly application (PA #321057235); and

WHEREAS, the Board finds that the subject legalization will neither alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents, and the Board finds, that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject legalization is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return in line with the minimum desirable return expected from comparable development; and

WHEREAS, the Board finds that the subject legalization is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Short Form, CEQR No. 17-BSA-070K, dated January 20, 2017; and

WHEREAS, the EAS documents that the project, as currently proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91

of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to legalize, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the operation of a physical culture establishment on portions of the cellar and first floor of an existing three- (3) story mixed-use commercial and residential building, contrary to ZR §§ 22-10 and 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 17, 2018”-Nine (9) sheets; and *on further condition*:

THAT the term of the grant will expire on July 16, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT fire safety measures shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-20-BZ”) shall be obtained within one (1) year, by July 16, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2019.

MINUTES

2018-34-BZ

CEQR #18-BSA-107Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 102 Metro, LLC, owner; Sedona Fitness, lessee.

SUBJECT – Application March 6, 2018 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Sedona Fitness*) to be located on portions of the cellar, first floor and the entirety of the second floor of an existing building contrary ZR §32-10. C2-3/R3A zoning district.

PREMISES AFFECTED – 102-02 Metropolitan Avenue, Block 3900, Lot(s) 1 & 5, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 1, 2018, acting on DOB Application No. 421481284, reads in pertinent part:

ZR 32-00 & ZR 73-36 – Proposed physical culture establishment (PCE) is not permitted as of right as per ZR 73-36. Provide BSA Approval; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within an R3-2 (C2-3) zoning district and partially within an R3A zoning district, a physical culture establishment (“PCE”) on portions of the cellar level, first and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, with a continued hearing on June 16, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Board was in receipt of one (1) form letter in support of the subject application; and

WHEREAS, the subject site is located on the southeast corner of Metropolitan Avenue and 71st Avenue, partially within an R3-2 (C2-3) zoning district and partially within an R3A zoning district, in Queens, and is occupied by an existing two- (2) story plus cellar commercial building; and

WHEREAS, while the subject site is located partially within an R3A zoning district where the subject special permit is not available, the entirety of the PCE exists within the R3-2 (C2-3) portion of the site; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or

health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 823 square feet of floor space in the cellar level, 904 square feet of floor area on the first floor and 3,617 square feet of floor area on the second floor and includes areas for reception, lockers, restrooms and exercise activities; and

WHEREAS, the applicant represents that the PCE began operation in January 2009, as “Sedona Fitness for Women,” and has the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that, while the PCE is located in a commercial building, and has operated at this location without reports of noise issues, sound attenuation measures have been installed to ensure that sound levels in other areas of the building do not exceed 45 dBA, including sound emanating from any sound system; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located on a busy commercial thoroughfare in an existing commercial building and located in an area characterized by buildings that are either fully occupied by commercial uses or are occupied by commercial uses on the lower levels; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE has operated in this location since January 2009 without complaint and anticipates that

the PCE will be an asset to the community; and

WHEREAS, the applicant states that a sprinkler system will be installed in the building and an approved fire alarm system is installed and maintained within the PCE space; and

WHEREAS, by letter dated July 12, 2019, the Fire Department (“FDNY”) states that these premises are currently protected by a fire alarm system that has been inspected and accepted by the Department; an inspection was performed by the Bureau’s Licensed Public Place of Assembly (“LPPA”) Unit and violations were issued for various infractions of the Fire Code and a re-inspection is being performed; the revised plans were reviewed and are acceptable and the Department has no objection to the Board’s rendering a decision on this application as the Bureau of Fire Prevention will continue to inspect the premises and enforce any outstanding violation orders; and

WHEREAS, at hearing, the Board raised concerns regarding the appearance of a parking area in the rear of the building; and

WHEREAS, in response the applicant represented, and the Fire Department confirmed, that the area in the rear is an emergency egress passage and agreed to a condition that a four- (4) foot wide unobstructed walkway be maintained in that area to serve emergency egress purposes; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-107Q, dated March 7, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the cellar level, first and second floors, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within an R3-2 (C2-3) zoning district and partially within an R3A zoning district, the operation of a physical culture establishment on portions of the cellar level, first and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “June 27, 2019”-Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June

MINUTES

16, 2019;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT a sprinkler system shall be installed and maintained, and an approved fire alarm system with connection to an FDNY-central station shall also be maintained, within the PCE space, as per BSA-approved plans;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT a four (4) foot wide pedestrian walkway shall be provided in the rear of the building and shall be maintained unobstructed at all times;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-34-BZ”), shall be obtained within one (1) year, by June 16, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2019.

2017-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cee Jay Real Estate Development Corp., owner.

SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a three-story, single family residence contrary to ZR §23-45 (Front Yard), ZR § 23-461(a) (Side Yards on Corner Lots), ZR §25-622 (Parking Spaces between the street wall line and street line) and ZR §23-451 (Plantings on Corner Lots). R3-1 zoning district. PREMISES AFFECTED – 311 Adams Avenue, Block 3679, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for adjourned hearing.

2017-244-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board’s Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M. for continued hearing.

MINUTES

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.

SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.

PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

REGULAR MEETING

TUESDAY AFTERNOON, JULY 16, 2019

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2019-36-BZ

CEQR #19-BSA-094M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 12w21 Land, I.P., owner; Precision Run Flatiron, Inc., lessee.

SUBJECT – Application February 19, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Precisions Run*) to be located on the first floor of an existing commercial building contrary to ZR §32-10. C6-4A Ladies’ Mile Historic District.

PREMISES AFFECTED – 12 West 21st Street, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 7, 2019, acting on DOB Application No. 123509426, reads in pertinent part:

Proposed physical culture establishment in C6-4A zoning district is contrary to Section 32-10 ZR and requires a special permit from the BSA (73-36); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-4A zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing 12-story plus cellar and mezzanine commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 16, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of the subject application; and

MINUTES

WHEREAS, the subject site is located on the south side of West 21st Street, between Fifth Avenue and Avenue of the Americas, in a C6-4A zoning district and in the Ladies' Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 51 feet of frontage along West 21st Street, 92 feet of depth, 4,646 square feet of lot area and is occupied by an existing 12-story plus cellar and mezzanine commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 2014, when, under BSA Cal. No. 209-13-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE on the second floor of the subject building, operating as "NY Physical Training Fitness Studio," on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant expire on January 1, 2018; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; any massages be performed only by New York State licensed massage professionals; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the above conditions appear on the certificate of occupancy; substantial construction be completed in accordance with ZR § 73-70; this approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement,

- body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 3,168 square feet of floor space in the cellar with men's and women's restrooms with showers, laundry, storage and mechanical spaces; and 3,268 square feet of floor area on the first floor with the PCE reception area,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

lounge, retail space, lockers, restrooms and a treadmill studio; and

WHEREAS, the applicant represents that the PCE began operation in June 2019, as “Precision Run,” and has the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that, while the PCE is located in a commercial building, sound attenuation measures have been installed to ensure that sound levels in other areas of the building do not exceed 45 dBA; these measures include “box within box” construction of the treadmill studio, utilizing jack slabs with kinetic isolators in the studio flooring, sound attenuating material in the walls and ceiling, as well as multiple layers of gypsum board covered in acoustical plaster; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing commercial building and occupies an area that has been used for commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will be an asset to the community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system are installed and maintained within the PCE space; and

WHEREAS, by letter dated July 12, 2019, the Fire Department (“FDNY”) states that these premises currently have a fire alarm, standpipe and sprinkler systems that were inspected and tested satisfactorily to FDNY standards; modifications of the fire alarm and sprinkler systems for the PCE space have been filed with DOB and FDNY; the installation of the proposed roll down fire door at the cellar floor, as a fire door, is to be reviewed and approved by DOB; and, FDNY has no objection to the Board’s rendering a decision on this application as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, the Landmarks Preservation Commission (“LPC”), pursuant to Certificate of No Effect CNE-19-

35227, approved work consisting of interior alterations at the cellar and first floor, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical and HVAC work, and issued a permit for minor work, PMW-19-37340, at the north façade to permit the installation of black vinyl lettering at the glazing at the transom and doors; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19BSA094M, dated February 21, 2019; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the cellar level, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-4A zoning district, the operation of a physical culture establishment on portions of the cellar level and first floor of an existing 12-story plus cellar and mezzanine commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “July 16, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 1, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT a sprinkler system and an approved fire alarm system shall be maintained within the PCE space, as per BSA-approved plans;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this

MINUTES

approval and calendar number (“BSA Cal. No. 2019-36-BZ”), shall be obtained within one (1) year, by July 16, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 16, 2019.

2018-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Petros Realty, owner.

SUBJECT – Application May 9, 2018 – Special Permit (§73-621) to permit the legalization of a one-story horizontal enlargement at the rear of an existing three-story and cellar mixed-use commercial and residential building, C1-3/R6B (Special Bay Ridge District).

PREMISES AFFECTED – 7406 Fifth Avenue, Block 5930, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2018-149-BZ

APPLICANT – Alfonse Duarte for Q.S.A.C. Inc., owner.

SUBJECT – Application September 17, 2018 – Special Permit (§73-621) to permit a one-story extension to a one family dwelling contrary to ZR §23-142) (Floor Area Ratio). R3-1 zoning district.

PREMISES AFFECTED – 230-48 146th Avenue, Block 13465, Lot 35, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to July 23, 2019, at 10 A.M., for decision, hearing closed.

2018-150-BZ

APPLICANT – Law Office of Lyra J. Altman, for Isaac Mizrahi, owner.

SUBJECT – Application September 18, 2018 – Variance (§72-21) to permit the enlargement of an existing one family home contrary to ZR §23-14 (FAR); ZR §23-143 (Lot Coverage); ZR §23-161(b) (Side Yard); ZR §23-461(c) (less than required open area between buildings); and ZR §23-47 (Rear Yard). R4 zoning district.

PREMISES AFFECTED – 2215 Homecrest Avenue, Block 7373, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M. for postponed hearing.

2018-167-BZ

APPLICANT – Sheldon Lobel, P.C., for Steven Oppenheimer, owner.

SUBJECT – Application October 19, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district.

PREMISES AFFECTED – 1133 East 22nd Street, Block 7604, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

DOCKET577

CALENDAR of August 13, 2019

Afternoon578/579

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, July 23, 2019**

Morning Calendar580

Affecting Calendar Numbers:

| | |
|----------------------------|--|
| 81-74-BZ | 97-27 57 th Avenue, Queens |
| 143-01-BZ | 348 East 9 th Street, Manhattan |
| 193-97-BZ | 27-29 Great Jones Street, Manhattan |
| 189-12-BZ | 98 Montague Street, Brooklyn |
| 751-60-BZ | 105 New Dorp Lane aka 1395 New Dorp Plaza, Staten Island |
| 332-79-BZ | 43-20 Little Neck Parkway, Queens |
| 85-99-BZ | 1106 Metcalf Avenue, Bronx |
| 2019-13-A & 2019-14-BZY | 11-31 Ryerson Street, Brooklyn |
| 2017-217-BZ | 4855 Hylan Boulevard, Staten Island |
| 2017-273-BZ | 975 East 24 th Street, Brooklyn |
| 2017-298-BZ | 14 White Street, Manhattan |
| 2018-8-BZ | 1820 Cropsey Avenue, Brooklyn |
| 2018-48-BZ | 5205 Hylan Boulevard, Staten Island |
| 2018-96-BZ | 145 Ludlow Street, Manhattan |
| 2018-140-BZ | 100-03 North Conduit Avenue, Queens |
| 2018-149-BZ | 230-48 146 th Avenue, Queens |
| 2018-156-BZ | 100-03 North Conduit Avenue, Queens |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 2018-104-BZ | 1234-1238 East 22 nd Street, Brooklyn |
| 2018-143-BZ | 20 West 14 th Street, Manhattan |
| 2018-171-BZ | 1 East 70 th Street, Manhattan |

Afternoon Calendar621

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2019-58-BZ | 133-35 79 th Street, Queens |
| 2017-261-BZ | 527 East New York Avenue, Brooklyn |
| 2019-40-BZ | 175-179 East 73 rd Street, Manhattan |

DOCKETS

New Case Filed Up to July 23, 2019

2019-192-BZ

16 Harrison Place, Block 03093, Lot(s) 13, Borough of **Brooklyn, Community Board: 1.** Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district. M1-2 district.

2019-193-BZ

310 East 14th Street, Block 00455, Lot(s) 1, 5, 7, 20, 52, 60, Borough of **Manhattan, Community Board: 3.** Variance (§72-21) to permit the construction of a new 7-story plus screened rooftop hospital building hospital building (Mount Sinai Beth Israel) contrary to underlying bulk requirements. C1-6A and C1-7A Special Transit Land Use District. C1-6A/C1-7A district.

2019-194-BZ

50 Titus Avenue, Block 4033, Lot(s) 0094, Borough of **Staten Island, Community Board: 2.** Variance (§72-21) to permit the construction of a single-family detached home contrary to ZR 23-461 (side yards). R3-1 zoning district. R3-1 district.

2019-195-A

191 Industrial Loop, Block 7206, Lot(s) 299, Borough of **Staten Island, Community Board: 3.** Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District. M3-1(SRD) district.

2019-196-BZ

41 East 20th Street, Block 00849, Lot(s) 0029, Borough of **Manhattan, Community Board: 5.** Special Permit (§73-36) to permit the legalization of a physical culture establishment (La Casa Day Spa) contrary to ZR §42-10. M1-5M zoning district. M1-5M district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING AUGUST 13, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 13, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

186-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Bond Street Owner, LLC, owner.

SUBJECT – Application May 23, 2019 – Extension of Time of a previously approved Variance (§72-21) to permit the construction of a new hotel building with ground floor retail contrary to allowable commercial floor area (ZR 33-122) which expired on May 19, 2019. C6-1/R6B Downtown Brooklyn Special District.

PREMISES AFFECTED – 51-63 Bond Street and 252-270 Schermerhorn Street, Block 172, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

2017-324-BZ

APPLICANT – Schoeman Updike Kaufman & Gerger LLP, for Ames Associates, owner; Performix House, LLC, lessee.

SUBJECT – Application December 22, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Performix House*) to be located on the second floor of an existing building contrary to ZR §32-10. C6-4M and C6-2 zoning district.

PREMISES AFFECTED – 80 Fifth Avenue, Block 577, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #2M

2018-19-BZ

APPLICANT – Francis R. Angelino, Esq., for 119 W 23 Acquisition LLC, owner; Humming Puppy, Inc., lessee.

SUBJECT – Application February 7, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Humming Puppy*) within a portion of the second floor of an existing building contrary to ZR §32-10. M1-6 and C6-3X zoning district.

PREMISES AFFECTED – 119 West 23rd Street, Block 799, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #4M

2019-7-BZ

APPLICANT – Francis R. Angelino, Esq., for Westchester Country Club Land Association, Inc., owner.

SUBJECT – Application January 14, 2019 – Special Permit (§73-121) to permit a proposed educational training facility (Fordham University Sailing and Rowing Team) contrary to ZR §22-10. R2 zoning district.

PREMISES AFFECTED – 3341 Country Club Road, Block 5409, Lot 470, Borough of Bronx.

COMMUNITY BOARD #10BX

2019-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Park South Tenants Corporation, owner; 305 Fitness Studio 58th St. LLC, lessee.

SUBJECT – Application January 18, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*305 Fitness*) to be located on the first floor of an existing commercial building contrary to ZR §32-10. C5-1/R10H zoning district.

PREMISES AFFECTED – 205 West 58th Street, aka 920 7th Avenue, Block 1030, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

2019-34-BZ

APPLICANT – Jodi Stein, of Herrick, Feinstein, LLP, for The Reece School, owner.

SUBJECT – Application February 15, 2019 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) (*The Reece School*) contrary to ZR 24-522 (street wall). R7-2 zoning district.

PREMISES AFFECTED – 25-27 East 104th Street, Block 1610, Lot(s) 11 and 12, Borough of Manhattan.

COMMUNITY BOARD #11M

2019-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jimmy Guindi, owner.

SUBJECT – Application February 28, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-47 (rear yard); ZR 23-143 (open space) and 23-461(a) (side yard). R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2311 East 4th Street, Block 7156, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2019-49-BZ

APPLICANT – Jay Goldstein, Esq., for 1 Nassau Owner LLC, owner; Vital East LLC, lessee.

SUBJECT – Application August 13, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Vital Climbing Gym) contrary to ZR §42-10. M1-1 and M1-2 zoning districts.

PREMISES AFFECTED – 221 North 14th Street, Block 2639, Lot(s) 7&9, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2019-50-BZ

APPLICANT – Jay Goldstein, Esq., for DLMC Inc., owner; Trinity Boxing and Athletic Club Inc., lessee.

SUBJECT – Application March 18, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Trinity Boxing*) on portions of the cellar, first and mezzanine level of an existing building contrary to ZR §42-10. C6-2A zoning districts.

PREMISES AFFECTED – 116 Duane Street, Block 150, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #1M

2019-61-BZ

APPLICANT – Jay Goldstein, Esq., for Morris Spitzer, owner.

SUBJECT – Application March 22, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-141 (FAR & open space ratio); ZR 23-461(a) (side yard) and 23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1370 East 24th Street, Block 7659, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 23, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application December 30, 2016 – Extension of Term / amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 30, 2016, acting on DOB Application No. 421402609, reads in pertinent part:

Proposed extension of term of previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R61 & R6B zoning district which will expire on February 27th, 2017. Refer to Board of Standards & Appeals; and

WHEREAS, this is an application for an extension of the term of a variance previously granted by the Board which expired on February 27, 2017, and an amendment to legalize a recycling structure on the property; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019 and July 23, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is bound by 57th Avenue to the south, 97th Place to the west, 98th Street to the east,

located partially within an R6B zoning district and located partially within an R6A (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 192 feet of frontage along 57th Avenue, 184 feet of frontage along 97th Place, 158 feet of frontage along 98th Street, 34,177 square feet of lot area and is occupied by an existing one- (1) story plus mezzanine supermarket (Use Group (“UG”) 6) containing 23,894 square feet of floor area, with loading berth and 21 accessory off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1962, when, under BSA Cal. No. 549-61-BZ, the Board granted a variance to permit the erection and maintenance of a one- (1) story building for use as stores, only as permitted in a restricted retail district, with loading and unloading, accessory parking of patrons’ cars on the open area, with business signs and curb cuts, for a term of 25 years, to expire February 27, 1987, on condition that the work be done in accordance with drawings filed with the application; on the north, east and west boundaries of the parking lot a split-sapling fence be constructed on steel supports with the finished side of the split-sapling fence facing out; bumpers be provided around the perimeter where cars are to be parked and that between the bumpers and split-sapling fence there be planted a three- (3) foot wide hedge; the hours for loading and unloading be from 8:00 a.m. to 6:00 p.m. only; all laws, rules and regulations applicable be complied with; and, permits be obtained, work done and a certificate of occupancy be obtained within one (1) year, by February 27, 1963; and

WHEREAS, on June 26, 1962, under BSA Cal. No. 549-61-BZ, the Board amended the resolution to permit the building to be redesigned, rearranged, constructed and used substantially as shown on drawings of proposed conditions filed with the application, with arrangement of the balance of the premises and curb cuts shown thereon, on condition that the building be faced with face brick on all four (4) sides; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on February 13, 1963, under BSA Cal. No. 549-61-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one (1) year, by February 13, 1963, on condition that a certificate of occupancy be obtained; and

WHEREAS, on June 25, 1974, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-412, permitted the erection of a one- (1) story enlargement to the existing supermarket and extended the term, to expire on February 27, 1987, on condition that all work substantially conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by June 25, 1975; and

WHEREAS, on April 28, 1987, under the subject calendar number, the Board amended the resolution to extend the term for ten (10) years, to expire on February 27, 1997, on condition that other than as amended the resolution

MINUTES

be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 28, 1988; and

WHEREAS, on July 13, 1999, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on February 27, 2007, and legalized the enlargement of the storage area, on condition that the premises be kept clean of debris and graffiti; all landscaping be maintained in accordance with BSA-approved plans; all lighting be pointed away from residential uses; the premises be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 13, 2000; and

WHEREAS, on April 24, 2007, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on February 27, 2017, on condition that the use substantially conform to the approved plans; the conditions be listed on the certificate of occupancy; the site be maintained free of debris; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired on February 27, 2017, the applicant seeks a ten- (10) year extension of the term; and

WHEREAS, the applicant also seeks an amendment to legalize a recycling machine structure at the southeast corner of the subject site; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the circulation of the site, the presence of the recycling machine at the corner of the site facing the intersection, instead of a more shielded location, and inaccurate signage shown on the plans; and

WHEREAS, in response, the applicant amended the plans to add one (1) parking space and correct the signage, and submitted plans for a proposed new permanent recycling machine structure, all in satisfaction of the Board; and

WHEREAS, by letter dated January 23, 2019, the Fire Department states that a review of their records indicates that the fire suppression system (sprinkler) was inspected and tested satisfactorily, and the Department has no objection to the Board rendering a decision on this case; and

WHEREAS, the Board finds that ten- (10) year extension of the term of the variance, originally granted in 1962, under BSA Cal. No. 549-61-BZ, as amended through April 24, 2007, under the subject calendar number, is appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards

and Appeals *amends* the resolution, issued February 27, 1962, under BSA Cal. No. 549-61-BZ, as amended through April 24, 2007, under the subject calendar number, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on February 27, 2027, *on condition* that all work and site conditions shall comply with drawings filed with this application marked “Received May 16, 2019”-Six (6) sheets, “July 11, 2019”-Four (4) sheets and “July 23, 2019”-Two (2) sheets; and *on further condition*:

THAT the term of the variance shall expire February 27, 2027;

THAT no trash or recyclables shall be stored outside of the approved structure;

THAT the recycling machine structure materials, including the exterior finish, shall be maintained and repaired, painted or replaced as necessary to maintain it in first-class condition;

THAT the premises shall be kept clean of debris and graffiti;

THAT all landscaping shall be maintained in accordance with BSA-approved plans;

THAT all lighting shall be pointed away from residential uses;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 81-74-BZ”), shall be obtained within one (1) year, by July 23, 2020;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 23, 2019.

143-01-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for Thomas R. Birchard, owner.

SUBJECT – Application July 23, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) which permitted the operation of a veterinarian’s office contrary to ZR §22-10. R8B zoning district.

PREMISES AFFECTED – 348 East 9th Street, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and procedure and extension of time to obtain a certificate of occupancy, which expired on March 6, 2019; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of East 9th Street, between Second Avenue and First Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along East 9th Street, 94 feet of depth, 2,348 square feet of lot area and is occupied by an existing six- (6) story plus cellar and sub-cellar mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to legalize the operation of a veterinary office (Use Group 6B) located at the cellar level on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the first floor at the premises revert to a conforming use within one (1) year, by November 12, 2003; there be no boarding of animals at the premises; the term of the variance be limited to five (5) years, expiring November 12, 2007; a new certificate of occupancy be obtained within one (1) year, by November 12, 2003; the conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on March 6, 2018, under the subject calendar number, the Board amended the resolution to extend both the term of the variance and time to obtain a certificate of occupancy on condition that all work and site conditions conform to the Board-approved plans; the term of the grant be limited to 15 years, expiring November 12, 2022; the use permitted by the grant be limited to a veterinary office (Use Group 6B); there be no boarding of animals at the subject site; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by March 6, 2019; all conditions from prior resolutions not

specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, at hearing, the Board raised concerns regarding compliance with the condition that there be no boarding of animals at the subject site; and

WHEREAS, in response, the applicant provided an affidavit from the owner of the building affirming that there has not been, nor will there be, any boarding of animals at the subject site; and

WHEREAS, based upon its review of the record, the Board finds that a one (1) year extension of time to obtain a certificate of occupancy is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated November 12, 2002, as amended through March 6, 2018, so that as further amended this portion of the resolution reads: “to grant a one (1) year extension of time to obtain a certificate of occupancy to March 6, 2020, *on condition*:

THAT the term of the grant shall expire November 12, 2022;

THAT the use permitted by the grant shall be limited to a veterinary office (Use Group 6B);

THAT there shall be no boarding of animals at the subject site;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 143-01-BZ”) shall be obtained by March 6, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

MINUTES

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 23, 2019.

193-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Twenty Nine Great Jones Street Corp., owner; Great Jones Spa, LLC, lessee.

SUBJECT – Application April 23, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (Great Jones Spa) which expires on April 21, 2018. M1-5B zoning district.

PREMISES AFFECTED – 27-29 Great Jones Street, Block 530, Lot 20 (7502), Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application an extension of the term of a special permit previously granted pursuant to ZR § 73-36, which expired on April 21, 2018; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Great Jones Street, between Lafayette Street and Bowery, in an M1-5B zoning district and in the NoHo Historic District Extension, in Manhattan; and

WHEREAS, the site has approximately 53 feet of frontage along Great Jones Street, 100 feet of depth, 5,283 square feet of lot area and is occupied by existing adjacent five- (5) and six- (6) story plus cellar, sub-cellar and mezzanines mixed-use commercial and residential buildings; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the sub-cellar (5,004 square feet of floor space), cellar (3,477 square feet of floor space), cellar mezzanine (554 square feet of floor space), first floor (2,267 square feet of floor area) and first floor mezzanine (639 square feet of floor area); and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 21, 1998, when, under the subject

calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE in the sub-cellar, cellar, first floor and first floor mezzanine of two (2) existing adjacent five- (5) and six- (6) story mixed-use buildings on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; signage be maintained in accordance with BSA-approved plans; roof-top HVAC and mechanical equipment comply with the New York City Noise Code; the special permit be limited to a term of ten (10) years, to expire on April 21, 2008; the hours of operation of the bath house be limited to 8:00 a.m. to 12:00 a.m., midnight; all signage be provided and maintained in accordance with BSA-approved plans; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a new certificate of occupancy be obtained within one (1) year, by April 21, 1999; and

WHEREAS, by letter dated July 30, 1998, the Board approved plans to permit an increase in floor area as well as a modified layout of the premises; and

WHEREAS, by letter dated February 25, 2000, the Board approved plans to permit the relocation of the women’s locker area from the first floor mezzanine level to the cellar mezzanine level and the mechanical space from the cellar mezzanine to the first floor mezzanine, resulting in a minor decrease in floor area; and

WHEREAS, by letter dated April 29, 2003, the Board approved plans to permit the creation of an area in the rear of the first floor mezzanine to be used for manicures and pedicures, resulting in an increase in the PCE total floor area, from 11,182 square feet to 11,941 square feet; and

WHEREAS, on October 27, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for ten (10) years, to expire April 21, 2018, on condition that all work substantially conform to plans filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that the PCE continues to operate as Great Jones Spa and has limited its hours of operation to 9:30 a.m. to 10:00 p.m., daily; and

WHEREAS, by letter dated July 20, 2019, the Fire

MINUTES

Department states that an initial inspection of the PCE was performed on July 11, 2018, by the Bureau’s Licensed Public Place of Assembly unit (“LPPA”) and a violation order was issued for failure to obtain a certificate of operation; subsequent inspections were performed and proof was provided of the tenants actions to obtain such operating permit; a review of the DOB Buildings Information System (“BIS”) shows that the Place of Assembly application was approved on July 18, 2019; when the operating permit is issued, the violation order will be dismissed; these premises and the PCE space have a fire alarm system that has been inspected and tested satisfactorily to the Department’s rules and regulations; additionally, these premises are protected by a standpipe and sprinkler system that is scheduled for testing on September 25, 2019; and, the Department has no objection to the Board rendering a decision on the subject application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated April 21, 1998, as amended through October 27, 2009, so that, as amended, this portion of the resolution reads: “to permit an extension of term for ten (10) years, to expire on April 21, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘July 17, 2019’-Eight (8) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 21, 2028;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT signage shall be maintained in accordance with BSA-approved plans;

THAT roof-top HVAC and mechanical equipment shall comply with the New York City Noise Code;

THAT the hours of operation of the bathhouse shall be limited to 8:00 a.m. to 12:00 a.m., midnight;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the

certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 193-97-BZ”) shall be obtained within one (1) year, by July 23, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 23, 2019.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Bossert LLC, owner.

SUBJECT – Application January 11, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on January 8, 2017. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the modification and conversion of an existing building into a transient hotel (Use Group (“UG”) 5)—with 280 rooms and accessory hotel use (UG 5) and commercial use (UG 6)—and expired on January 8, 2017; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is bound by Montague Street to the north, Hicks Street to the west and Remsen Street to the south, partially within an R7-1 (C1-3) zoning district and partially within an R6 zoning district, within the Limited Height (LH-1) District and in the Brooklyn Heights Historic

MINUTES

District, in Brooklyn; and

WHEREAS, the site has approximately 78 feet of frontage along Montague Street, 200 feet of frontage along Hicks Street, 78 feet of frontage along Remsen Street, 15,635 square feet of lot area and is occupied by a 14-story with cellar, basement and mezzanine commercial building, currently under construction; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 8, 2013, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the modification and conversion of an existing building into a transient hotel (UG 5) with 280 rooms and accessory hotel use (UG 5) and commercial use (UG 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the following be the bulk parameters of the proposed building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 square feet (11.55 floor area ratio ("FAR")); transient hotel floor area of 177,649 square feet; commercial floor area of 2,884 square feet; and a maximum of 280 hotel rooms (including suites); the following conditions be applicable to the 14th floor restaurant and terrace: no music, amplified or unamplified, and no sound amplification system of any kind be permitted on the outdoor terrace; the 14th floor restaurant and terrace contain sound attenuation measures as shown on the approved plans and indoor music be limited to 69 dbA at all times; the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace; the 14th floor restaurant close by 11:00 p.m. on the weekdays, and by 12:00 a.m. on Fridays and Saturdays (i.e., no patrons be allowed in the restaurant after these times); the 14th floor terrace close at 10:00 p.m. on all nights (i.e., no patrons be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve; the following conditions be applicable to the ground floor restaurant and meeting rooms: the meeting rooms on the ground floor and in the basement be restricted to use by registered hotel guests, and may not be rented to or used by non-hotel guests; the meeting rooms and the ground floor restaurant contain sound attenuation measures as shown on the approved plans; the capacity of both ground floor restaurant spaces be limited to a combined total of 240 persons; the following conditions be applicable to pedestrian and vehicular traffic: the hotel provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, and be available for parking 24 hours a day, seven (7) days a week; at least two (2) dedicated staff at the hotel entrance manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning by radio cars when needed by guests, using a dispatch system; no rope lines, checkpoints, or check-in tents be permitted at any time outside

of the hotel; no tour or charter buses be permitted to load or unload in front of the hotel; deliveries be limited to hours between 7:00 a.m. and 7:00 p.m.; the Remsen Street entrance only be used for required egress; and on the following other conditions: no cabaret license be issued for any space in the hotel; no occupancy be permitted in any other outdoor space, other than the 14th floor terrace except as may be required for egress from terrace; a sign be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors."; any exterior lighting at all times be directed away from neighboring buildings; all conditions be listed on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the grant be contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and, the DOB ensure compliance with all other relevant provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant submits that the commencement of construction at the site has been delayed due to difficulties in matching historic materials, including marble window surrounds and tile flooring, but estimates that construction is 95 percent complete; and

WHEREAS, based upon its review of the record, the Board finds that a one (1) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated January 8, 2013, so that as further amended this portion of the resolution reads: "to grant a one (1) year extension of time to complete construction to July 23 2020, *on condition*:

THAT substantial construction shall be completed by July 23, 2020, as evidenced by an inspection and determination by the Department of Buildings;

THAT the following shall be the bulk parameters of the proposed building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 square feet (11.55 FAR); transient hotel floor area of 177,649 square feet; commercial floor area of 2,884 square feet; and a maximum of 280 hotel rooms (including suites);

14th Floor Restaurant and Terrace:

THAT no music, amplified or unamplified, and no sound amplification system of any kind is permitted on the outdoor terrace;

THAT the 14th floor restaurant and terrace shall contain sound attenuation measures as shown on the approved plans and indoor music shall be limited to 69 dbA at all times;

MINUTES

THAT the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace shall comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace;

THAT the 14th floor restaurant shall close by 11:00 p.m. on the weekdays, and by 12:00 a.m. on Fridays and Saturdays (i.e., no patrons shall be allowed in the restaurant after these times);

THAT the 14th floor terrace shall close at 10:00 p.m. on all nights (i.e., no patrons shall be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve;

Ground Floor Restaurant and Meeting Rooms:

THAT the meeting rooms on the ground floor and in the basement shall be restricted to use by registered hotel guests, and may not be rented to or used by non-hotel guests;

THAT the meeting rooms and the ground floor restaurant shall contain sound attenuation measures as shown on the approved plans;

THAT the capacity of both ground floor restaurant spaces shall be limited to a combined total of 240 persons;

Pedestrian and Vehicular Traffic:

THAT the hotel shall provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, and shall be available for parking 24 hours a day, seven (7) days a week;

THAT at least two (2) dedicated staff at the hotel entrance shall manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning by radio cars when needed by guests, using a dispatch system;

THAT no rope lines, checkpoints, or check-in tents are permitted at any time outside of the hotel;

THAT no tour or charter buses are permitted to load or unload in front of the hotel;

THAT deliveries shall be limited to hours between 7:00 a.m. and 7:00 p.m.;

THAT the Remsen Street entrance shall only be used for required egress;

Other Conditions:

THAT no cabaret license shall be issued for any space in the hotel;

THAT no occupancy shall be permitted in any other outdoor space, other than the 14th floor terrace except as may be required for egress from terrace;

THAT a sign shall be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors.";

THAT any exterior lighting shall at all times be directed away from neighboring buildings;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by July 23, 2020;

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

THAT the above conditions shall be recorded on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 189-12-BZ") shall be obtained by July 23, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 23, 2019.

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board's Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

332-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Northern Spots LLC, owner.

SUBJECT – Application June 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and maintenance of an accessory parking facility which expired on February 13, 2015; Waiver of the Board's Rules. R2A zoning district.

PREMISES AFFECTED – 43-20 Little Neck Parkway, Block 8129, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for adjourned hearing.

MINUTES

85-99-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Silvestre Petroleum Corp., owner; Mobil Oil Corporation, lessee.

SUBJECT – Application March 12, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting, the operation of an automotive service station (Use Group 16B) with an accessory convenience store which is set to expire on June 27, 2020; Waiver of the Board’s Rules to permit the early filing. R6 zoning district. PREMISES AFFECTED – 1106 Metcalf Avenue, Block 3747, Lot 88, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2019-13-A & 2019-14-BZY

APPLICANT – Ross F. Moskowitz, Esq., for SDF 47 Ryerson Street, LLC, owner.

SUBJECT – Application January 18, 2019– Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment on December 20, 2018. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district.

PREMISES AFFECTED – 11-31 Ryerson Street, Block 1877, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – Special Permit (§73-126) to permit a two-story with cellar ambulatory diagnostic or treatment health care facility (UG 4) contrary to ZR §22-14(A). R3X (Special South Richmond Development District) (Lower Density Growth Management Area).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 22, 2017, acting on Alteration Application No. 520302084, reads in pertinent part:

“ZR 22-14(A) Proposed ambulatory diagnostic or treatment health care facility with more than 1,500 square feet of floor area including cellar space is not permitted as-of-right . . . pursuant to foot note 1 to ZR 22-14(A)”;

and
WHEREAS, this is an application under ZR §§ 73-126 and 73-03 to permit, in an R3X zoning district, in the Special South Richmond Development District, the enlargement of an existing one-story community-facility building used as an ambulatory diagnostic or treatment health care facility (Use Group 4) that does not comply with zoning regulations for use, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with continued hearings on May 22, 2018, November 8, 2018, February 5, 2019, and then to decision on July 23, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application, citing concerns with the size and bulk of the building originally proposed as well as the availability of parking in the vicinity; and

WHEREAS, Council Member Joseph C. Borelli submitted testimony in support of this application; and

WHEREAS, residents of the surrounding area submitted testimony in opposition to this application, citing general concerns about potential traffic and parking impacts; and

WHEREAS, the subject site is located on the north side of Hylan Boulevard, between Allen Place and Barclay Avenue, in an R3X zoning district, in the Special South Richmond Development District, in Staten Island; and

WHEREAS, the subject site has approximately 202 feet of frontage along Hylan Boulevard, 93 feet of frontage along Allen Place, 102 feet of frontage along Barclay Avenue, 20,319 square feet of lot area and is occupied by a one-story, with cellar, community-facility building used as an ambulatory diagnostic or treatment health care facility (Use Group 4) with 9 accessory off-street parking spaces and a radio tower to be removed; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 17, 2008, when, under BSA Calendar Number 27-08-BZ, the Board granted a special permit the construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications on condition that fencing be maintained in

MINUTES

accordance with the Board-approved drawings; and

WHEREAS, [ZR § 73-126](#) provides that:

In R3-1, R3A, R3X, R4-1, R4A or R4B Districts in *lower density growth management areas*, the Board of Standards and Appeals may permit ambulatory diagnostic or treatment health care facilities listed in Use Group 4, limited in each case to a maximum of 10,000 square feet of *floor area*, provided that such facilities are located on *zoning lots* that comply with the minimum *lot area* and *lot width* regulations of Section [23-35](#) (Special Provisions for Zoning Lots Containing Certain Community Facility Uses in Lower Density Growth Management Areas).

In addition, for *buildings* in R3, R4 and R5 Districts in *lower density growth management areas* subject to the provisions of paragraph (b) of Section [24-012](#) (Exceptions to the bulk regulations of this Chapter) the Board may permit the *development* of a *building* pursuant to the *bulk* regulations of Article II, Chapter 4 (Bulk Regulations for Community Facilities in Residence Districts).

In order to grant such special permit, the Board shall find that:

- (a) the amount and type of open area and its distribution on the *zoning lot* is compatible with the character of the neighborhood;
- (b) the distribution of *bulk* on the *zoning lot* will not unduly obstruct access of light and air to adjoining properties or *streets*; and
- (c) the scale and placement of the *building* on the *zoning lot* relates harmoniously with surrounding *buildings*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the applicant submits that the subject site is a zoning lot that complies with applicable minimum lot width and lot area regulations because the subject site's width is greater than 60 feet and its area is greater than 5,700 square feet, consistent with ZR § 23-35; and

WHEREAS, the applicant proposes to enlarge the existing community-facility building from 3,708 square feet of floor area (0.35 FAR) to 8,538 square feet of floor area (0.42 FAR) and increase number of off-street accessory parking spaces from 9 to 21; and

WHEREAS, the applicant states that, at the subject site, ambulatory diagnostic or treatment health care facilities (Use Group 4) are limited to 1,500 square feet of floor area, including cellar space, under ZR § 22-14; and

WHEREAS, the applicant represents that open areas proposed for the subject site are compatible with the

surrounding neighborhood with respect to their amount, type and distribution; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area and submitted a neighborhood character study, demonstrating that the open areas in the vicinity are characterized by grassy areas and impermeable paved surfaces with swimming pools, driveways and accessory garages; and

WHEREAS, the applicant states that the proposed open areas devoted to parking (19 percent) is consistent with the surrounding area (23 percent); and

WHEREAS, the applicant also notes that the proposed open areas have been arranged to provide more planted areas (41 percent) than the surrounding neighborhood (27 percent), which increases compatibility of the proposed building with the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the amount and kind of open area and its distribution on the subject site is compatible with neighborhood character; and

WHEREAS, the applicant submits that the bulk of the proposed enlargement is designed so as to prevent unduly obstructing access to light and air on adjacent streets and properties; and

WHEREAS, in particular, the applicant notes that the proposed enlargement is located away from the two adjacent residences to the north along Allen Place and Barclay Avenue and that the proposed enlargement maintains the existing perimeter wall height of 26'-0"; and

WHEREAS, the applicant further states that the proposed enlargement maintains and exceeds applicable yard regulations with front yards with depths of 41'-8" along Allen Place and 27'-1" along Barclay Avenue and a side yard with a depth of 18'-0" for the proposed enlargement; and

WHEREAS, accordingly, the Board finds that the distribution of bulk will not unduly obstruct access of light and air to adjoining streets or properties; and

WHEREAS, the applicant states that the proposed enlargement has been designed so that its height, proportions and massing comport with the built environment of the surrounding area; and

WHEREAS, in response to community concerns and questions from the Board, the applicant states that the proposed building has been redesigned from the original proposal to minimize the massing of its frontage along Hylan Boulevard and to eliminate the second story; and

WHEREAS, the applicant notes that the proposed building incorporates architectural features common to residential buildings, including muntins, a balustraded balcony and a decorative transom; and

WHEREAS, the applicant submits that the proposed building has brick and wood or concrete board siding on its exterior; and

WHEREAS, the applicant states that the height of the proposed enlargement is the same as the existing building and maintains consistency with two-story buildings in the vicinity; and

MINUTES

WHEREAS, the applicant also represents that the proposed building has been arranged to provide ample landscaping that will screen the proposed enlargement and open parking areas from surrounding residential properties with dense hedges and trees; and

WHEREAS, accordingly, the Board finds that the scale and placement of the building proposed relates harmoniously with surrounding buildings; and

WHEREAS, in response to community concerns and questions from the Board at hearing regarding parking, the applicant submits that the proposed building complies with applicable parking regulations; and

WHEREAS, the applicant also submitted a parking study demonstrating that the proposed enlargement will not result in any adverse parking impacts; and

WHEREAS, in response to questions from the Board regarding the lawfulness of yards for the existing building, the applicant submitted a DOB determination dated April 25, 2016, which states that “as per Department of Building record, the application NB 2957/198[7] was approved on February 14, 1990 shows a 20 feet setback. The final survey dated September 15, 2006 indicates a 19.20 feet setback for the as-built conditions. We accepted this 19.20 feet setback and issued of the final certificate of occupancy in 2007,” and a DOB determination dated February 6, 2018, which states “okay to accept existing [8.10’] non-complying side yard as stated”; and

WHEREAS, in response to questions from the Board regarding the classification of the building’s lowest level, the applicant submitted a DOB determination dated July 3, 2019, which states that the applicant’s “request to accept lowest level [as a cellar under ZR § 12-10] is hereby approved”; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA150R, dated November 9, 2018; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated November 15, 2017, the New York City Department of City Planning’s Waterfront and Open Space Division represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and that this action is consistent with WRP policies; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-126 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-126 and 73-03 to *permit*, in an R3X zoning district, in the Special South Richmond Development District, the enlargement of an existing one-story community-facility building used as an ambulatory diagnostic or treatment health care facility (Use Group 4) that does not comply with zoning regulations for use, contrary to ZR § 22-14; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 17, 2019”-Fourteen (14) sheets; and *on further condition*:

THAT the ambulatory diagnostic or treatment health care facility (Use Group 4) shall be limited to a maximum of 8,538 square feet of floor area (0.42 FAR), as illustrated on the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-217-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

MINUTES

2017-273-BZ

CEQR #18-BSA-038K

APPLICANT – Law Office of Lyra J. Altman, for Carol Greenberger & Sidney Greenberger, owners.

SUBJECT – Application September 27, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 975 East 24th Street, Block 7588, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 11, 2017, acting on Department of Buildings (“DOB”) Application No. 321439706, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to Zoning Resolution Section 23-461 in that the proposed side yard is less than the minimum required;
4. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, enlargement of a single-family detached dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio (“OSR”), side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with continued hearings on June 25, 2019, and July 23, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue I and Avenue J, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 24th Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar single-family dwelling with an FAR of 0.55 (2,204.14 square feet of floor area), an OSR of 1.26 (2,777 square feet of open space), two (2) side yards with widths of 4’-1-1/2” and 8’-9” and a rear yard with a depth of 27’-3-1/8”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
 - (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to both vertically and horizontally enlarge the building, resulting in a two- (2) story plus attic, cellar and sub-cellar single-family dwelling with an FAR of 1.0 (4,000 square feet of floor area), an OSR of 0.57 (2,261 square feet of open space), two (2) side yards with widths of 4'-1-1/2" and 8'-9" and a rear yard with a depth of 20 feet at the first floor and 25 feet above; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,223 square feet to 1,707 square feet, the second floor from 981 square feet to 1,566 square feet, and the attic from 0 square feet to 727 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (2,000 square feet of floor area), and a minimum OSR of 1.5 (3,000 square feet of open space based on a complying 0.5 FAR), two (2) side yards with minimum widths of five (5) feet and 13 feet of total side yard, and a rear yard

with a depth of 30 feet are required pursuant to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying northern side yard and the Board notes that, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises and within an R2 zoning district (the "Study Area") concluding that, of the 84 qualifying residences, 67 residences (80 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.3, and 9 residences (11 percent) have an FAR of 1.0 or greater; and

WHEREAS, with regards to open space ratio, the applicant demonstrated that, within the Study Area, 78 residences (93 percent) have an OSR less than 1.5, ranging from 1.48 to 0.36; and

WHEREAS, with regards to the rear yard depth, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that 28 dwellings located on interior lots (90 percent) have rear yards with a depth of less than 30 feet, with rear yard depths ranging from 29 feet to zero (0) feet, including the dwelling adjacent to the subject site, which has a rear yard with a depth of 20 feet; and

WHEREAS, over the course of hearings, the Board raised concern that the proposed building was too tall for the neighborhood and also requested that the applicant provide a deeper rear yard above the first floor; and

WHEREAS, in response, the applicant amended the plans to reduce the total height of the building to 35 feet and reduced the rear yard extension above the first floor to provide a 25-foot rear yard depth at the second floor and above; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-038K, dated September 28, 2019; and

MINUTES

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “July 18, 2019”-Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 1.0 FAR (4,000 square feet of floor area), a minimum OSR of 0.57 (2,261 square feet of open space), two (2) side yards with minimum widths of 4’-1-1/2” and 8’-9” and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet above, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by July 23, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-273-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2017-298-BZ

CEQR #18-BSA-058M

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – Variance (§72-21) to permit the construction of a seven-story plus penthouse mixed commercial and residential building contrary to floor area regulations of ZR §111-20; street wall regulations of ZR §23-662; accessory parking regulations of ZR §13-11; and the curb cut location requirements of ZR §13-241. C6-2A (Special Tribeca Mixed Use District, Tribeca East Historic District.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 20, 2017, acting on New Building Application No. 121190059, reads in pertinent part:

ZR 23-662 Proposed street wall height along portions of the Avenue of the Americas frontage is below the minimum base height of 60 feet, contrary to ZR 23-662, paragraph (c)(1), and requires a variance from the Board of Standards and Appeals under ZR 72-21.

ZR 111-20 Proposed total floor area ratio exceeds the 5.0 FAR permitted in Area A1, contrary to ZR 111-20, paragraph (a), and requires a variance from the Board of Standards and Appeals under ZR 72-21; and

WHEREAS, this is an application under ZR § 72-21 to permit, in a C6-2A zoning district, within the Special Tribeca Mixed Use District and the Manhattan Core, the development of a seven-story, with cellar, mixed-use commercial and residential building that does not comply with zoning regulations for floor area and minimum street wall height, contrary to ZR §§ 23-662 and 111-20; and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, with continued hearings on August 21, 2018, November 8, 2018, March 26, 2019, May 21, 2019, and July 23, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends disapproval of this application; and

MINUTES

WHEREAS, the subject site is a triangular lot located on the northwest corner of White Street and Sixth Avenue, in a C6-2A zoning district, within the Special Tribeca Mixed Use District and the Manhattan Core, in Manhattan; and

WHEREAS, the site has approximately 70 feet of frontage along White Street, 119 feet of frontage along Sixth Avenue, 3,835 square feet of lot area and is occupied by an attended parking lot for up to 42 vehicles; and

WHEREAS, the site is located adjacent to a subway tunnel that runs along the site's Sixth Avenue frontage; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," ZR § 72-21; and

WHEREAS, the applicant originally proposed to develop an eight-story, with cellar, mixed-use commercial and residential building with 23,059 square feet of floor area (6.01 FAR), including 20,618 square feet of residential floor area and 2,441 square feet of commercial floor area, 10 dwelling units, seven residential accessory parking spaces, and a curb cut located approximately 40 feet from the intersection of White Street and Sixth Avenue; and

WHEREAS, in response to questions from the Board at hearing and as discussed herein, the applicant revised this application to comply with parking and curb-cut regulations and eliminated one story from the building originally proposed, thereby decreasing the floor area of the proposed building; and

WHEREAS, the applicant now proposes to develop a seven-story, with cellar, mixed-use residential and commercial building with 20,300 square feet of floor area (5.29 FAR), including 17,994 square feet of residential floor area and 2,306 square feet of commercial floor area, nine dwelling units with two accessory parking spaces, a minimum height of 15'-2" of the portion of the street wall along Sixth Avenue, and a curb cut located approximately 51 feet from the intersection of White Street and Sixth Avenue; and

WHEREAS, the applicant submits that the following are unique physical conditions inherent in the zoning lot that create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations: small lot area and irregular shape; and

WHEREAS, with respect to uniqueness, the applicant surveyed the surrounding area and submitted a study demonstrating that, of 176 lots in the vicinity, the subject site is one of eight sites with less than 5,000 square feet of lot area, of which five are too small for independent development, leaving two other sites that are potentially similarly situated; and

WHEREAS, this uniqueness study also demonstrates that the subject site's shape is one of six sites with less than 4,000 square feet of lot area and an irregular triangular or trapezoidal shape with adjacent acute interior angles; and

WHEREAS, drawings furnished by the applicant reflect that an as-of-right development would consist of a seven-story mixed-use building that complies with bulk and

parking regulations and would contain 19,154 square feet of floor area (5.0 FAR), including 16,489 square feet of residential floor area and 2,306 square feet of commercial floor area and nine dwelling units; and

WHEREAS, the applicant submitted evidence demonstrating that the subject site's small lot area and irregular shape would beleaguer this as-of-right development by reducing usable area, by creating circulation constraints and hard-to-furnish acute corners in room interiors, and by increasing façade costs; and

WHEREAS, furthermore, an architectural diagram illustrates that an as-of-right building on a similarly sized lot with a rectangular shape would contain substantially more usable interior space; and

WHEREAS, in support of the applicant's originally proposed eight-story development, the applicant furnished a voluminous number of studies pertaining to the subject site's adjacency to a subway tunnel and the subway tunnel's asserted impact on the subject site, including a geotechnical report, a subway-tunnel uniqueness study, foundation plans, a foundation cost comparison, and supplements to the applicant's construction cost estimates and financial feasibility study; and

WHEREAS, however, as discussed at hearing, based on its expertise in the field of engineering, the Board is unpersuaded that the subject site faces practical difficulties or unnecessary hardship from its adjacency to a subway tunnel because the subject site's soil conditions would require micropiles regardless of the presence of a subway tunnel, thereby belying any hardship associated with a vibration isolation system or the cost of concrete; and

WHEREAS, the Board also directed the applicant to remove the originally proposed automatic parking system from this application because of its cost and disturbance of the integrity of the first-floor commercial space and the second-floor and third-floor apartments by segmenting these areas into odd configurations; and

WHEREAS, based on the foregoing and as discussed at hearing, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that, because of the above unique physical conditions, there is no reasonable possibility of realizing a reasonable return from developing the subject site in strict conformance with the Zoning Resolution; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a building with a complying 5.0 FAR—would result in a substantial loss on investment but that the proposed 5.29 FAR building would yield a return consistent with the minimum end of the range of acceptable market returns; and

WHEREAS, in response to questions from the Board at hearing, the applicant notes that, even were construction

MINUTES

costs reduced by approximately \$2 million to exclude vibration isolation system and concrete costs, the return reflected by the proposed development would only rise a minimal amount and still reflects the low end of a reasonable return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that the other three corners of the intersection on which the subject building fronts contain lots that permit an as-of-right maximum FAR of 6.02 and, further, that within 200 feet of the subject site, there are four (4) buildings with FARs ranging from 6.0 to 23.7; and

WHEREAS, the applicant further furnished an illustrative visibility study demonstrating that the massing of the proposed building comports with the built character of its environs; and

WHEREAS, by letter dated March 22, 2019, the Fire Department states that, if the Board grants a variance with respect to parking, plans for the automated parking system must be filed with and approved by the Fire Department and DOB's Office of Technical Certification and Research; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, more specifically, the applicant notes that the subject site was created by the 1930 southward extension of Sixth Avenue that cut through the subject block; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant submits that the proposed variance is the minimum necessary to permit productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, in particular, in response to questions from the Board, the applicant submitted evidence that a 5.0 FAR building with only a setback waiver would not result in a reasonable return; and

WHEREAS, over the course of hearings, the applicant revised the project to reduce the extent of the FAR waiver sought, from 6.01 FAR to the proposed 5.29 FAR, and eliminated the need for waivers of zoning requirements relating to parking and curb cuts; and

WHEREAS, based on the foregoing, the Board finds that the proposed variance is the minimum necessary to

afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment ("EAS") CEQR No. 18BSA058M, received July 18, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated March 22, 2019, the Landmarks Preservation Commission represents that the project would not result in adverse impacts with respect to architectural or archaeological resources; and

WHEREAS, by letter dated May 2, 2019, the Department of Environmental Protection ("DEP") states that it has determined that the proposal would not result in either potential significant adverse noise or air quality impacts on condition that windows be installed with sound attenuation of 35 dBA in an enclosed condition with alternative means of ventilation; and

WHEREAS, by correspondence dated May 23, 2019, the Department of Parks and Recreation states that the proposal would not have any adverse impact with respect to shadows; and

WHEREAS, by letter dated July 10, 2019, DEP recommends that, based on prior on-site or surrounding-area land uses that could result in environmental contamination, an (E) designation (No. E-544) for hazardous materials shall be placed on the site to ensure that testing and mitigation will be provided as necessary before any future development or soil disturbance and that further hazardous-materials assessments shall be coordinated through the Mayor's Office of Environmental Remediation; and

WHEREAS, by correspondence dated July 16, 2019, the Department of City Planning's Waterfront Open Space Division states that the proposal will not substantially hinder the achievement of any Waterfront Revitalization Program policy; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to

MINUTES

warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type I Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in a C6-2A zoning district, within the Special Tribeca Mixed Use District and the Manhattan Core, the development of a seven-story, with cellar, mixed-use commercial and residential building that does not comply with zoning regulations for floor area and minimum street wall height, contrary to ZR §§ 23-662 and 111-20; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received July 22, 2019”-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 20,300 square feet of floor area (5.29 FAR), including 17,994 square feet of residential floor area and 2,306 square feet of commercial floor area, and a minimum height of 15’-2” of the portion of the street wall along Sixth Avenue, as illustrated on the Board-approved drawings;

THAT plans for any automated parking system shall be filed and approved by the Department of Buildings and Fire Department prior to the start of construction;

THAT windows shall be installed with sound attenuation of 35 dBA in an enclosed condition with alternative means of ventilation;

THAT an (E) designation (No. E-544) for hazardous materials shall be placed on the site to ensure that testing and mitigation will be provided as necessary before any future development or soil disturbance, and further hazardous-materials assessments shall be coordinated through the Mayor’s Office of Environmental Remediation;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-298-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board’s Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 26, 2017, acting on Department of Buildings (“DOB”) Application No. 321695894, reads in pertinent part:

Per ZR 32-25: Proposed Use Group 16 is not permitted as of right in C1-2 district; herewith requesting re-establishment of an expired variance to permit a garage, automotive repair shop with accessory uses and modification to the site are contrary to the BSA grant under application 1051-21-BZ/189[-89-BZ] and not permitted as of right within a C1-2/R5 zoning district. Respectfully request Department of Buildings denial as application must be referred back to the Board of Standards and Appeals; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reinstatement of a variance, pursuant to ZR § 11-411, previously granted by the Board, which expired on January 15, 2003, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on June 11, 2019, and July 23, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of the application on condition that no spray paint booths be used at the premises; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application and five (5) form

MINUTES

letters in opposition to this application, citing concerns regarding noise, traffic and pollution; and

WHEREAS, the subject site is located on the southeast corner of Cropsey Avenue and Bay 19th Street, in an R5 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 127 feet of frontage along Cropsey Avenue, 151 feet of frontage along Bay 19th Street, 18,874 square feet of lot area and is occupied by an existing one- (1) story plus cellar and mezzanine garage with motor vehicle repair shop, offices and storage; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 27, 1922, when, under BSA Cal. No. 1051-21-BZ, the Board granted a variance to permit the erection of a public garage and repair shop on condition that the front elevations on Cropsey Avenue and Bay 19th Street be finished in face brick with stone trimmings; all permits necessary for the prosecution of the work be obtained within six (6) months, by January 27, 1923, and the building completed within one (1) year, by July 27, 1923; and

WHEREAS, on December 11, 1951, under BSA Cal. No. 1051-21-BZ, the Board permitted the extension of the use into the area into the residence district, substantially as proposed on plans filed with the application, for a term of five (5) years, on condition that a woven wire fence of the chain link type be constructed on the interior lot lines to the south and east, as proposed and as indicated, and also along the line of Bay 19th Street from the adjoining lot line to the wall of the existing one- (1) story building; there be no openings in such fence at any point; planting be maintained along such fence and along the street building line of Bay 19th Street, as indicated on such plan; planting be of the suitable type and be protected with concrete curbing at least 12 inches in height; the balance of the premises where not occupied by buildings be leveled and surfaced with bituminous paving, properly rolled; the existing curb cuts, if legally permitted, may be maintained but not extended except that the existing curb cut to Cropsey Avenue toward the west may be enlarged from 12 feet to 25 feet; in all other respects the existing building and occupancy and the occupancy for parking in the residence use area as herein permitted comply with all laws, rules and regulations applicable thereto; the portion of the parking area within the residence use district not be used for any other use and only for the parking of motor vehicles of the pleasure car type; all permits be obtained and all work completed within six (6) months, by June 11, 1952; and

WHEREAS, on March 17, 1959, under BSA Cal. No. 1051-21-BZ, the Board granted an extension of the variance to permit the erection and maintenance of a one- (1) story extension to an existing building and extend the use of garage for trucks and repair shop to include body and fender work, incidental painting and spraying, welding and storage of parts, for a term of ten (10) years, substantially as proposed and as indicated on plans filed with the application, on condition that the building not be increased in height or area other than as proposed to be extended as

shown on such plans; the use may be as proposed, namely, garage and motor vehicle repair shop; under Section 7i, for a similar term, there may be motor vehicle repairing, including body and fender work and incidental painting and spraying, excluding all welding; the existing curb cuts to Cropsey Avenue and Bay 19th Street may be retained as proposed; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; and, all permits required be obtained and all work completed within one (1) year, by March 17, 1960; and

WHEREAS, on June 9, 1959, under BSA Cal. No. 1051-21-BZ, the Board amended the resolution to permit the installation of offices, toilet and locker room partitions in the new area at the southerly end of the building toward Cropsey Avenue, as shown on plans filed with the application, on condition that in all other respects the resolution be complied with; and, all permits be obtained, all work completed and a certificate of occupancy be obtained within one (1) year, by June 9, 1960; and

WHEREAS, on February 24, 1960, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one (1) year, by February 24, 1961, on condition that a certificate of occupancy be obtained; and

WHEREAS, on October 11, 1960, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution such that in the event the owner desires to remove the mezzanine from the old portion of the building and to construct an office mezzanine, approximately 22 feet by 32 feet, over the office space in the new portion of the building, such change may be permitted substantially as shown on revised plans filed with the application, with the exception that minor auto repairs in the new portion of the building, and the two (2) 550-gallon tanks and two (2) pumps at the Cropsey Avenue entrance not be permitted, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 3, 1969, and February 13, 1979, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution to extend the term for periods of ten (10) years, the latter of which to expire on March 17, 1989, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on November 23, 1971, under BSA Cal. No. 335-71-BZ, the Board, pursuant to ZR § 11-412, permitted the installation of a 4,000-gallon gasoline tank and pump on condition that all work substantially conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by November 23, 1972; and

WHEREAS, on January 15, 1991, under BSA Cal. No. 189-89-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, reinstated a variance for and addition of partial second floor to an existing one- (1) story and mezzanine truck garage with accessory uses (Use Group 16) on condition that

MINUTES

all work substantially conform to plans as they apply to the objections, filed with the application; the ventilation system on the premises comply with the Building Code and all other applicable laws; no vehicles park on the sidewalk; there be no parking of commercial vehicles on the residential streets and no vehicle washing on the streets; all signs comply with C1 district regulations; motor vehicle repairs be limited to vehicles owned by Bayside Fuel Oil Co.; the term be limited to two (2) years, to expire on January 15, 1993; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by January 15, 1995; and

WHEREAS, on July 27, 1993, under BSA Cal. No. 189-89-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, amended the January 1991 resolution to extend the term and permit the elimination of the second floor enlargement previously approved by the Board on condition that the term of the variance be for ten (10) years, to expire on January 15, 2003, the premises be kept clean and free of graffiti and in substantial compliance with the proposed conditions drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 27, 1994; and

WHEREAS, the prior term having expired, the applicant now seeks a reinstatement of the variance, first issued in 1921, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*1 was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood; and

WHEREAS, in addition, because this application was filed more than ten (10) years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(4)(i), to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(4)(i) of the Board's Rules

requires a demonstration by the applicant that the use has been continuous since the expiration of the term and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant states that the site has operated continuously since the expiration of the term and provided evidence including copies of leases, invoices, Fire Department permits and utility bills for the subject site to continuously cover the entire period of January 2003 through the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the Board's Rules and represents that, absent the subject waiver to permit filing of the application, it will be required that the building be converted to a conforming use, necessitating complete demolition of the subject site at significant cost; and

WHEREAS, the applicant also seeks an amendment to legalize interior alterations to the site, including the replacement of the interior repair shop space to offices, and to remove incidental painting from the certificate of occupancy; and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing accessory building, which has existed in its current dimensions and location on the site since the Board's original grant of the variance in 1922, and, instead, proposes to legalize interior alterations the existing building as is permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of public hearings, the Board raised concerns regarding the nature of use at the subject site—a garage for the storage of cars for sale by a nearby dealership as well as readying of cars for sale by said dealership—and sought clarification; and

WHEREAS, in response, the applicant represented that the nearby dealership uses the garage as so stated and agreed to conditions restricting the use of the site specific to the preparing of cars for sale by the dealership and prohibiting the use of the site from cars not to be sold by the dealership or already sold by the dealership; and

WHEREAS, by letter dated January 5, 2019, the Fire Department states that a review of their records indicates that the subject site is current with its permits for the storage of combustible liquids and fuel storage, and the Bureau of Fire Prevention has no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules, reinstatement of the variance and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(4)(i) of the Board's Rules of Practice and Procedure and, pursuant to ZR §§ 11-411 and 11-412, reinstates and *amends* a previously-granted variance to permit, on a site located within an R5 (C1-2) zoning district, the operation of a garage with motor vehicle repair shop, offices and storage and lawful uses accessory thereto, *on condition* that all work and site conditions shall conform to drawings filed with this

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

application marked "Received, May 23, 2019"-Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on July 23, 2029;

THAT no repairs shall be made on any vehicles that do not belong to the dealership;

THAT the repair of vehicles shall be limited only to those owned by the dealership, prior to their sale;

THAT no repairs are permitted to be made on any purchased vehicles;

THAT there shall be no vehicles parked on the sidewalk at any time;

THAT signage shall be provided and maintained indicating the prohibition of sidewalk parking;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 189-89-BZ, not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-8-BZ") shall be obtained within one (1) year, by July 23, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-48-BZ

APPLICANT – Philip L. Rampulla, for Joseph Marino, owner.

SUBJECT – Application March 30, 2018 – Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 5205 Hylan Boulevard, Block 6499, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Deputy

Borough Commissioner, dated March 9, 2018, acting on Department of Buildings ("DOB") Application No. 520326424, reads in pertinent part:

The proposed construction of an attendant booth for car wash, auto repair, lubritorium (Use Group 16) located in an R3X zoning district is not permitted as of right. Therefore, obtain Board of Standards and Appeals approval. The proposed continued use of a gasoline service station (Use Group 16) located in an R3X zoning district with an expired zoning variance under BSA Calendar # 97-93-BZ is not permitted and reference back to the NYC Board of Standards and Appeals; and

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, reinstatement of a variance, previously granted by the Board, which expired on September 13, 2004, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on April 30, 2019, and June 11, 2019, and then to decision on July 23, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the application; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the northeast corner of Hylan Boulevard and Arbutus Avenue, in an R3X zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 185 feet of frontage along Hylan Boulevard, 36 feet of frontage along Arbutus Avenue, 7,733 square feet of lot area and is occupied by an existing gasoline service station with two (2) gasoline fuel pumps and a one (1) story automobile repair building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1931, when, under BSA Cal. No. 106-30-BZ, the Board granted a variance to permit, temporarily, in a then-business use district, the erection and maintenance of a gasoline service station, for two (2) years, to expire on May 12, 1933, on condition that all pumps be set back at least ten (10) feet from the building line; if the application should be considered later on for a permanent permit, all other necessary conditions be then imposed; all necessary permits be obtained within six (6) months, by November 12, 1931; and, any work involved be completed within nine (9) months, by February 12, 1932; and

WHEREAS, on July 18, 1933, under BSA Cal. No. 106-30-BZ, the Board granted a variance to permit, temporarily, in a then-business use district, the erection and maintenance of a gasoline service station, for two (2) years, on condition that the pumps be installed back at least ten (10) feet from the building line; the arrangement of the

MINUTES

station be substantially in accordance with plans filed with the application; and, all permits be obtained within two (2) months, by September 18, 1933; and

WHEREAS, on June 11, 1935, April 27, 1937 and May 2, 1939, under BSA Cal. No. 106-30-BZ, the Board amended the July 1933 resolution to extend the term for periods of two (2) years, the latter of which to expire on May 2, 1941, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on March 18, 1941, under BSA Cal. No. 106-30-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on March 18, 1946, on condition that in all other respects the resolution be complied with; and

WHEREAS, on February 5, 1946, under BSA Cal. No. 106-30-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on February 5, 1951, on condition that other than as amended the resolution be complied with in all respects, and a certificate of occupancy be obtained; and

WHEREAS, on January 9, 1951, under BSA Cal. No. 106-30-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on January 9, 1956, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on January 24, 1956, under BSA Cal. No. 106-30-BZ, the Board further amended the resolution, in view of the change to a local retail use zone, to extend the term for five (5) years, to expire on January 24, 1961, on condition that all permits and a new certificate of occupancy be obtained within three (3) months, by April 24, 1956; and

WHEREAS, on July 24, 1956, under BSA Cal. No. 106-30-BZ, the Board amended the resolution to permit an increase in the number of gasoline storage tanks, by two (2), to make a total of eight (8) such approved 550-gallon tanks, as shown on the revised plan filed with the application; and

WHEREAS, on June 11, 1963, under BSA Cal. No. 106-30-BZ, the Board granted a variance to permit the reconstruction of the existing automotive service station, lubricatorium, non-automatic car wash, minor auto repairs with hand tools only and the parking of motor vehicles awaiting service, for a term of 25 years, to expire on June 11, 1985, on condition that the work be done in accordance with plans filed with the application, with the exception that the curb cut on Arbutus Avenue shown on such drawings be omitted; a four- (4) foot high wall be built along the building line of Arbutus Avenue; all laws, rules and regulations applicable be complied with; and, permits be obtained, work completed and a certificate of occupancy obtained within one (1) year, by June 11, 1964; and

WHEREAS, on September 22, 1964, under BSA Cal. No. 106-30-BZ, the Board amended the June 1963 resolution to extend the time to obtain permits and complete the work for one (1) year, by September 22, 1965, on condition that a certificate of occupancy be obtained; and

WHEREAS, on November 30, 1965, under BSA Cal.

No. 106-30-BZ, the Board further amended the resolution to extend the time to complete the work and obtain a certificate of occupancy on condition that, in view of the statement by the applicant that the permit had been obtained and work was in progress, all work be completed and a certificate of occupancy be obtained within one (1) year, by November 30, 1966; and

WHEREAS, on February 28, 1967, under BSA Cal. No. 106-30-BZ, the Board further amended the resolution to extend the time to complete the work and obtain a certificate of occupancy on condition that, in view of the statement by the applicant that the permit had been obtained and work was in progress, all work be completed and a certificate of occupancy be obtained within one (1) year, by February 28, 1968; and

WHEREAS, on September 13, 1994, under BSA Cal. No. 97-93-BZ, the Board reinstated the expired variance, permitting a gasoline service station (Use Group (“UG”) 16) for a term of ten (10) years and the renovation of the existing gasoline service station, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the premises remain clean and free of debris and graffiti; all signs be limited to C1-1 district sign regulations in accordance with BSA-approved plans; fencing and landscaping be installed and maintained in accordance with BSA-approved plans; the term be limited to ten (10) years, to expire on September 13, 2004; the conditions appear on the certificate of occupancy; a new sidewalk be installed along Arbutus Avenue in accordance with BSA-approved plans prior to the issuance of a certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by September 13, 1998; and

WHEREAS, the prior term having expired, the applicant now seeks a reinstatement of the variance, first issued in 1931, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use* was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

use on the character of the neighborhood; and

WHEREAS, in addition, because this application was filed more than ten (10) years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(4)(i), to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(4)(i) of the Board's Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant states that the site has continuously operated as an automotive service station since 1930 and provided copies of Fire Department annual site inspection permits and receipts for the subject site to continuously cover the entire period of January 1994 through the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the Board's Rules because the site has undergone substantial financial investment through the decades to upgrade and improve the property for its continued operation; and

WHEREAS, the applicant also seeks an amendment to permit the relocation of the existing free-standing illuminated sign and to legalize the addition of an existing attendant booth, adding 69 square feet of floor area to the accessory building; and

WHEREAS, ZR § 11-412 states

Repairs or *incidental alterations* may be made and in appropriate cases the authorizing agency may permit structural alterations, *extensions* or *enlargements* limited to the *zoning lot* that was granted a variance, exception or permit prior to December 15, 1961. However, the *use* of any *building or other structure* shall not be *extended*, and the *building or other structure* shall not be *enlarged*, in excess of 50 percent of the *floor area* of such *building* (or size of such structure) occupied or utilized by the *use* on December 15, 1961, and, except as otherwise provided in Article VII, no structural alterations, *extensions* or *enlargements* shall be authorized for a new *non-conforming use* authorized under the provisions of Section 11-413 (Change of use); and

WHEREAS, the applicant submits that the 69 square foot addition to the existing accessory building, which contained approximately 1,609 square feet of floor area, is less than 50 percent of the floor area of the building occupied by such use on December 15, 1961, and, thus, the legalization complies with ZR § 11-412; and

WHEREAS, by letter dated November 16, 2018, the New York City Department of City Planning ("DCP"), Staten Island Office, states that, at the subject site, zoning requires a curb cut to be located lot less than 50 feet from the intersection of any two (2) street lines, both in Residential Districts regarding group parking facilities (ZR

§ 25-63) and Commercial Districts (ZR § 36-53); the 28-foot wide curb cut does not meet this requirement as it is within 19.5 feet of the intersection of Hylan Boulevard and Arbutus Avenue; DCP recommends that this 28-foot curb cut be eliminated from the "proposed conditions" plans for safety and in order to increase compliance with zoning to the greatest extent possible—eliminating this curb cut would not limit vehicular circulation as the adjacent existing curb cut on Arbutus Avenue already provides ingress and egress from that portion of the site and complies with the requirement in the Special South Richmond Development District that limits curb cuts on arterial roads such as Hylan Boulevard; and, DCP recommends that full curbs and sidewalks be constructed according to the applicant's plans (without the 28-foot curb cut) to resolve inaccuracies in the applicant's plans, facilitate safe pedestrian and vehicular access and circulation, and comply with zoning to the greatest extent practicable; and

WHEREAS, in response, the applicant amended the plans to remove said 28-foot curb cut; and

WHEREAS, over the course of public hearings, the Board raised concerns regarding the presence of tire storage on the proposed plans and the maintenance of the site free of debris and with fencing in good condition; and

WHEREAS, in response, the applicant amended the plans to remove tire storage from the site and provided pictures demonstrating the site clean of debris and the fencing replaced with solid vinyl fencing in satisfaction of the Board; and

WHEREAS, by letter dated April 26, 2019, the Fire Department states that a review of their records indicates that the subject site is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; the accessory repair facilities were also inspected and found to be in compliance with the Fire Department rules and regulations and the agency has no objection to the subject application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waivers of the Board's Rules, reinstatement of the variance and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(4)(i) of the Board's Rules of Practice and Procedure and, pursuant to ZR §§ 11-411 and 11-412, *reinstates* and *amends* a previously-granted variance, issued on May 12, 1931, under BSA Cal. No. 106-30-BZ, as amended through September 13, 1994, under BSA Cal. No. 97-93-BZ, to permit, on a site located in an R3X zoning district and in the Special South Richmond Development District, the operation of a gasoline service station and lawful uses accessory thereto, the relocation of an existing illuminated sign and the legalization of an attendant's booth (69 square feet of floor area) to the existing one- (1) story accessory service building, *on condition* that all work and site conditions shall conform to drawings filed with this application marked

MINUTES

“Received, July 2, 2019”-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on July 23, 2029;

THAT the site shall be maintained free of debris, trash and graffiti at all times;

THAT no tires may be stored outside;

THAT paving, fencing and slatting shall be maintained in good condition, as per BSA-approved plans, and be repaired or replaced as necessary to maintain them in first-class condition;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions, including those issued under BSA Cal. Nos. 106-30-BZ and 97-93-BZ, not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-48-BZ”) shall be obtained within one (1) year, by July 23, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-96-BZ

CEQR #18-BSA-141M

APPLICANT – Sheldon Lobel, P.C., for 145 Ludlow LLC, owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application May 23, 2018 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 145 Ludlow Street, Block 411, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated April 23, 2018, acting on Department of Buildings (“DOB”) Application No. 123357811, reads in pertinent part:

Proposed use as a physical culture establishment,

as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, a physical culture establishment (“PCE”) on portions of the cellar and first floor of an existing six- (6) story plus cellar and penthouse mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 26, 2019, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019, June 11, 2019, and July 23, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of five (5) form letters in support of this application and received testimony from two (2) tenants of the subject building in which the PCE is located in opposition to the application and raising concerns over excessive noise and vibration caused by the PCE operation; and

WHEREAS, the subject site is located on the west side of Ludlow Street, between Stanton Street and Rivington Street, in a C4-4A zoning district, in Manhattan; and

WHEREAS, the site has approximately 37 feet of frontage along Ludlow Street, 88 feet of depth, 3,283 square feet of lot area and is occupied by an existing six- (6) story plus cellar and penthouse mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 1,306 square feet of floor space in the cellar with men's and women's restrooms with showers, office and storage; and, 2,158 square feet of floor area on the first floor with cardiovascular equipment, including rowing machines,

stationary bikes, and a circuit training area, a free weight area, and sled track, the PCE entrance and restrooms; and

WHEREAS, the PCE began operation in May 2018, as "F45" with the following hours of operation: 5:30 a.m. to 8:30 p.m., Monday through Friday; 8:30 a.m. to 1:00 p.m. on Saturday; and, 9:30 a.m. to 12:30 p.m. on Sunday; and

WHEREAS, the applicant states that, in light of complaints by tenants in the building and Board recommendation, the PCE consulted with a sound engineer who evaluated the space and recommended the following measures to limit the impact of noise and vibration disturbances from the PCE operation; these measures include replacing the wall-mounted speaker with four (4) small home speakers, additional soundproofing measures on the PCE studio door, and a rubber mat system in areas of the PCE where weight drops may occur, acoustical ceiling tiles and a suspended ceiling; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing building, in a densely populated mixed-use area, located on a street consisting of many commercial uses and the PCE will contribute to the commercial character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and represents that the PCE will provide a benefit to the surrounding area; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—are maintained within the PCE space; and

WHEREAS, by letter dated February 15, 2019, the Fire Department states that these premises have approved fire alarm and sprinkler systems that were inspected and tested satisfactorily to Fire Department standards; modifications to the fire alarm and sprinkler system have been filed with DOB and are waiting for sign-offs; and, the Fire Department has no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention

MINUTES

will inspect these premises and enforce any violations issued; and

WHEREAS, over the course of hearings, the Board was in receipt of testimony and, upon Board recommendation, complaint logs from residential tenants of the subject site and raised concerns regarding said complaints of noise and vibration disturbance from the PCE operation to residential tenants above the PCE space; and

WHEREAS, in response, the PCE engaged a sound engineer to evaluate the impact to the residential units during music and weight drop testing in the PCE space who recommended that music be played only by non-wall mounted speakers and thick dimpled rubber mats be installed and maintained under the existing flat rubber mats; and

WHEREAS, the PCE subsequently provided photos of the installed mats and sound limiter on non-wall mounted speakers and the Board was in receipt of no additional complaint logs nor testimony in opposition to the subject application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-141M, dated June 1, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district, the operation of a physical culture establishment on a portion of the cellar level and first floor of an existing six- (6) story plus cellar and penthouse mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “May 2, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 1, 2028;

THAT volume shall be maintained by a limiter and shall not be altered;

THAT speakers shall be located so as to avoid noise disturbances to neighbors;

THAT mats shall be installed and maintained as per recommendation by the acoustical engineer, as shown on BSA-approved plans, replaced as needed;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-96-BZ”), shall be obtained within one (1) year, by July 23, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-140-BZ

APPLICANT – Eric Palatnik, P.C., for Cohancy Realty LLC, owner.

SUBJECT – Application August 27, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district.

PREMISES AFFECTED – 100-03 North Conduit Avenue, Block 11562, Lot(s) 106, 111, 113, 119, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 17, 2018, acting on DOB Application No. 421632576, reads in pertinent part:

Proposed automotive filling station with accessory convenience store use is contrary to ZR 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-211; and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to permit the construction of an automotive service station (Use Group (“UG”) 16B) with an accessory convenience store (UG 6) on a site located in an R3X (C2-2) zoning district; and

WHEREAS, a public hearing was held on this application on April 30, 2019, after due notice by publication in *The City Record*, with continued hearings on June 11, 2019, and July 23, 2019, and then to decision on that date; and

WHEREAS, Community Board 10, Queens, recommends approval of this application on the following conditions: the canopy be set back an additional five (5) feet from the property line fronting on North Conduit Avenue; the detached convenience store building be set back seven (7) feet from the rear of the canopy; the curb cuts be 30 feet in width; all on-site signage for vehicle entry and exit from the site be as presented; all site lighting be directed to the site and away from the adjoining residences; a restrictive declaration be executed and filed prior to the City Planning Commission Zoning Map Amendment #170492ZMQ approval, declaring that the premises not be developed/permitted with a UG 5 transient hotel, no modification, amendment or termination to the restrictive declaration be executed without prior review and consent by Community Board 10, Queens, it be executed and filed prior to the Board granting approval on this application, and the registered filing number appear on the certificate of occupancy; and

WHEREAS, the Board was in receipt of two (2) form letters in opposition to this application, citing concerns over noise, traffic and pollution; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of North Conduit Avenue and Cohancy Street, in an R3X (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 255 feet of frontage along North Conduit Avenue, 190 feet of frontage along Cohancy Street, 35,993 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over

the subject site, then comprised of tax lots 113, 115, 119 and 122, since October 28, 1952, when, under BSA Cal. No. 9-52-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station, to include lubritorium, motor vehicle repairs, sale and display of used cars and the parking and storage of more than five (5) vehicles, on condition that, except for the portion of the plot to be omitted, where then occupied by a dwelling, all uses of the premises be removed except the existing building used for repairing and the premises be graded substantially to the grade of surrounding streets and be arranged and constructed substantially as indicated on plans filed with the application; the accessory building be of the design, arrangement and materials proposed and shown and in all other respects comply with the requirements of the Building Code; the plan of the accessory building be revised so that no portion of same be nearer than ten (10) feet from the street building line of North Conduit Avenue; the proposed toilets, private offices and storage be rearranged to permit such a change in plan; there be no cellar under the accessory building; the existing one- (1) story repair shop to the north of the proposed accessory building may be continued; pumps be of the approved type erected not nearer than 15 feet to the street building line of North Conduit Avenue from the base of the pumps, as indicated; the number of gasoline storage tanks not exceed eight (8) 550-gallon tanks; the space at the rear may be occupied as proposed for open air parking and sale of motor vehicles; such space be surfaced with clean gravel or steam cinders and treated with a binder, with one (1) entrance only to Cohancy Street and with a curb cut opposite not exceeding 15 feet in width; there be erected on the interior lot lines from the existing 12-inch wall separating proposed parking space from the yard of the dwelling along Cohancy Street and along the northerly line and along all other interior lines generally to the east, a woven wire fence of the chain link type, not less than 5’-6” in height; there be constructed along the northerly line from the proposed accessory building to the street line of North Conduit Avenue, a masonry wall of not less than four (4) feet in height; curb cuts to North Conduit Avenue may be continued as existing, one (1) 27 feet in width and one (1) 46 feet in width, with no portion of any curb cut nearer than five (5) feet to a lot line as prolonged; at the intersection of North Conduit Avenue and Cohancy Street there be erected a block of concrete extending not less than five (5) feet along either building line from the intersection not less than 12 inches in height; the gasoline selling area be paved with concrete or asphalt; there be constructed a brick wall approximately five (5) feet south of the existing dwelling and extending to Cohancy Street, as shown, to a total height of not less than five (5) feet and properly coped; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; signs be restricted to a permanent sign attached to the façade of the accessory building facing westerly, and the illuminated globes of the pumps, excluding all roof signs and temporary signs, but permitting the erection within the

MINUTES

building line of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale, permitting such sign to extend beyond the building line for a distance of not over four (4) feet; there may also be a sign near the entrance to the parking and sales area, advertising such use and with such other information as may be required by the Commissioner of Licenses; such sign not be over 25 square feet, not extend beyond the building line and not be illuminated; any lights for general illumination be on steel post standards with metal reflectors so arranged as to reflect away from the adjoining residential occupancies; and, all permits required be obtained and all work completed within one (1) year, by October 28, 1953; and

WHEREAS, the applicant proposes to construct an automotive service station (UG 16B) with eight (8) fuel pumps and a one- (1) story accessory convenience store (UG 6) building, containing 3,990 square feet of floor area, with 13 accessory parking spaces and space for at least five (5) reservoir spaces; and

WHEREAS, ZR § 73-211 reads as follows:

In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in *streets*¹), the Board of Standards and Appeals may permit *automotive service stations*, provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not located on an arterial highway or a major *street* has a maximum area of 15,000 square feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubricatorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened, as the Board may prescribe, by either of the following methods:
 - (a) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be

expected to form a year-round dense screen at least six feet high within three years; or

- (b) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
- (a) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-*illuminated* or *illuminated non-flashing signs* with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
 - (b) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect *residential zoning lots* which are adjoining or across the *street*.

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, the Board confirms that the subject site is located in an R3X (C2-2) zoning district that has a longer dimension of at least 375 feet; that the subject site has a minimum of 7,500 square feet of lot area; that the site is located on North Conduit Avenue, a major street and, as such, the maximum lot area restriction is not applicable; and

WHEREAS, with regard to the conditions the Board is required to prescribe pursuant to ZR § 73-211, the applicant represents that the proposed automotive service station will not include facilities for lubrication, minor repairs or washing of automobiles but, instead, will utilize the accessory building as a UG 6 convenience store in accordance with TPPN # 10/99, and that the site is proposed to provide accessory parking spaces for a total of 13 motor vehicles, with space for five (5) reservoir spaces, in addition to those spaces available at the pumps; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the accessory retail use will be located on the same zoning lot as the automotive service station and within a completely enclosed building, and the proposed sales area of the accessory convenience store is 2,019 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (8,998 square feet); and

WHEREAS, in reference to vehicular movement on the site, the applicant submits that the entrances and exits have been planned so that at maximum operation, vehicular movement into or from the site will cause minimum obstruction on the surrounding streets or sidewalks, as the applicant proposes to install two (2) curb cuts on North Conduit Avenue, 15 feet wide and 40 feet wide, and two (2) additional 30-foot wide curb cuts on Cohancy Street and, pursuant to the applicant's traffic report, the proposed actions will not have a significant adverse impact on traffic flow, transit operations, pedestrian movement, or vehicular and pedestrian safety; and

WHEREAS, the applicant proposes the installation of a six- (6) foot high fence along the northerly and easterly lot lines and proposes to landscape the same with trees, shrubs, annuals and perennials; and

WHEREAS, the applicant also proposes to provide three (3) illuminated signs, ranging in size from 29 square feet to 32 square feet, totaling 91 square feet, and five (5) non-illuminated signs, ranging in size from 11 square feet to 17 square feet, all of which will comply with zoning regulations applicable in the underlying zoning district; and

WHEREAS, the Board finds that the applicant has submitted substantial evidence that the findings set forth in ZR § 73-211 have been met; and

WHEREAS, the applicant states that there are no proposed or existing capital projects along the subject site; and

WHEREAS, the Board finds that the subject proposal will not interfere with a 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, by letter dated January 30, 2019, the Fire Department states that, if the Board grants the subject special permit, the Bureau of Fire Prevention, Bulk Fuel Unit ("BFU") will be notified and monitor the site during construction; BFU will conduct an inspection and testing of the new tanks and pumps, and the fire suppression system (dry chemical) will also be inspected and tested; and, the Fire Department has no objection to the subject application; and

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the New York City Department of City Planning conducted an environmental review of the proposed action in connection with its review of an amendment to zoning sectional map 18b to map a C2-2 local service overlay within an R3X zoning district in Queens Community District 10 that includes the subject site and has documented relevant information about the project in the Environmental Assessment Statement ("EAS") Short Form, CEQR No. 18DCP017Q, dated August 28, 2018; and

WHEREAS, the EAS documents state that the proposed automotive service station with new storage tanks, pump islands, canopy and site improvements will not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, an (E) designation (E-493) has been placed on the site for air quality and noise; and

WHEREAS, with regard to air quality, the (E) designation requires that any new multi-unit commercial development on the site be developed as a single building with one (1) boiler stack for HVAC systems to avoid any potential significant adverse air quality impacts; and

WHEREAS, with regard to noise, the (E) designation requires, in order to ensure an acceptable interior noise environment, that future residential or community facility uses provide a closed-window condition with a minimum of 35 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A) and future commercial uses provide a closed-window condition with a minimum of 30 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 50 dB(A); and, to maintain a closed-window condition, an alternate means of ventilation—including, but not limited to, central air conditioning or air conditioning sleeves containing air conditioners—also be provided; and

WHEREAS, the Board has determined that the operation of the automotive service station at the premises will not have a significant adverse impact on the environment; and

WHEREAS, at hearing, the Board raised concern with regard to the operator's ability to prevent trucks and tractor-trailers from accessing the site from curb cuts not designed for truck maneuverability; and

WHEREAS, in response, the applicant stated that the operator maintains control of its delivery fleet, servicing the needs of the subject site, and will restrict the delivery of all fuel and store merchandise to be made through the designated truck access curb cut; and

MINUTES

WHEREAS, in light of the foregoing, the Board has determined that the requested special permit, permitting the construction and maintenance of an automotive service station, is appropriate, subject to conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals adopts the Negative Declaration, issued by the Department of City Planning on August 17, 2018, pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found in Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03 to permit, in an R3X (C2-2) zoning district, the construction of an automotive service station (Use Group 16B) with an accessory convenience store (Use Group 6); *on condition* that all work shall substantially conform to drawings filed with this application marked “July 24, 2019”-Nine (9) sheets; and *on further condition*:

THAT no additional curb cuts—beyond the two (2) curb cuts on North Conduit Avenue and the two (2) curb cuts on Cohancy Street, as described above—are permitted to access the proposed site at 100-03 North Conduit Avenue;

THAT all other existing curb cuts shall be eliminated and reconstructed as full-height curb and sidewalk;

THAT sidewalks for the easterly curb cut on North Conduit Avenue and the northerly curb cut on Cohancy Street shall be constructed of high-strength concrete (H-1045, Type III) to ensure their structural stability in accordance with their usage by trucks (including tractor-trailers and fuel trucks), as per current NYC DOT standards;

THAT in order to properly facilitate safe and efficient motor vehicle movements into and out of the site (including for tractor-trailers and fuel trucks) and prevent vehicles from overtracking onto the sidewalk, turning movements into and out of the driveways/curb cuts for trucks shall be limited as follows: easterly curb cut on North Conduit Avenue (40 foot curb cut): passenger cars and box trucks will be allowed to make all entry and exit movements into and out of the site; all tractor-trailers and fuel trucks will only be required to enter the site at this curb cut; westerly curb cut on North Conduit Avenue (15 foot curb cut): only passenger cars will be allowed to enter the site; no passenger car exit will be permitted; no truck access of any kind will be permitted into or out of the site; northerly curb cut on Cohancy Street (30 foot curb cut): passenger cars and box trucks will be allowed to make all entry and exit movements into and out of the site; tractor-trailers and fuel trucks will only be permitted to exit the site by making a left-turn onto southbound Cohancy Street; southerly curb cut on Cohancy Street (30 foot curb cut): passenger cars and box trucks will be allowed to make all entry and exit movements into and out of the site; no tractor-trailer or fuel truck access of any kind will be permitted into or out of the site;

THAT pavement markings shall also be installed on-site at each of the four (4) driveways to reinforce the allowable entry and exit movements to drivers;

THAT appropriate signs (e.g., "DO NOT ENTER") shall be posted facing drivers inside the proposed site to clearly identify that exiting movements are not allowed at the westerly curb cut on North Conduit Avenue;

THAT all proposed signs along the site frontage shall be located no closer than 18 inches from the face-of-curb on both North Conduit Avenue and Cohancy Street;

THAT the outside edge of all curb cut splays shall be no closer than seven (7) feet from any sidewalk appurtenance (e.g., sign poles, street light poles, fire hydrants, red light camera poles, etc.);

THAT in order to accommodate fuel-truck egress from the site, a "No Standing Anytime" parking regulation shall be posted on the west side of Cohancy Street, approximately 73 feet north of the existing "No Standing Anytime: Bus Stop" regulation. Installation of the required parking regulation signs shall be coordinated by the applicant through New York City Department of Transportation's Queens Borough Engineer's office;

THAT landscaping, as shown on the BSA-approved plans, shall be maintained in first-rate condition and replaced as needed;

THAT all signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

THAT an (E) designation (E-493) is placed on the site with regards to air quality and noise, requiring, with respect to air quality, that any new multi-unit commercial development on the site be developed as a single building with one (1) boiler stack for HVAC systems to avoid any potential significant adverse air quality impacts and, with respect to noise, requires an alternate means of ventilation to be provided, for future residential or community facility uses to provide a closed-window condition with a minimum of 35 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A) and future commercial uses to provide a closed-window condition with a minimum of 30 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 50 dB(A);

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-140-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT substantial construction shall be completed in accordance with ZR § 73-70, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other

MINUTES

relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-149-BZ

CEQR #19-BSA-035Q

APPLICANT – Alfonse Duarte for Q.S.A.C. Inc., owner.
SUBJECT – Application September 17, 2018 – Special Permit (§73-621) to permit a one-story extension to a one family dwelling contrary to ZR §23-142) (Floor Area Ratio). R3-1 zoning district.

PREMISES AFFECTED – 230-48 146th Avenue, Block 13465, Lot 35, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 5, 2018, acting on Alteration Application No. 421649425, reads in pertinent part:

“ZR 23-142 As per referenced ZR section, proposed extension exceeds the maximum allowable FAR on the zoning lot as indicated”;
and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on July 16, 2019, after due notice by publication in *The City Record*, with continued hearing on July 23, 2019, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, residents of the surrounding area submitted testimony in support of this application and in opposition to this application, citing concerns with the purported conversion of the subject building to a community facility or multiple dwelling; and

WHEREAS, the subject site is located on the southwest corner of 146th Avenue and 231st Street, in an R3-1 zoning district, in Queens; and

WHEREAS, the subject site has approximately 40 feet of frontage along 146th Avenue, 100 feet of frontage along 231st Street, 4,000 square feet of lot area and is occupied by

an existing single-family detached residence; and

WHEREAS, ZR § 73-621 provides that:

For a complying or *non-complying building* existing on December 15, 1961, or in R2X, R3, R4 or R5 Districts on June 30, 1989, and containing *residential uses*, the Board of Standards and Appeals may permit an *enlargement*, a change of *use* or (in the case of a *mixed building*) an *extension*, provided that such *enlargement*, change of *use* or *extension* shall not create any new *non-compliance* or increase the amount or degree of any existing *non-compliance* except as provided in this Section.

In the districts and for the *buildings* for which an *open space ratio* is required, the *open space ratio* permitted under this Section shall not be less than 90 percent of the *open space ratio* required under the applicable *bulk* regulations set forth in Article II or III of this Resolution. In the districts and for the *buildings* to which a maximum *lot coverage* applies, the maximum *lot coverage* permitted under this Section shall not exceed 110 percent of the maximum *lot coverage* permitted under the applicable *bulk* regulations set forth in Article II or III of this Resolution. In all districts, the *floor area ratio* permitted under this Section shall not exceed the *floor area ratio* permitted under such regulations by more than 10 percent. In R2X, R3 or R4 Districts, the additional *floor area* permitted pursuant to this Section may be computed using a base *floor area ratio* including the *floor area* permitted under a sloping roof with a structural headroom between five and eight feet when such space is provided in the *building*; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the applicant submits that the subject application seeks to enlarge an existing residential building that existed on June 30, 1989, as contemplated in ZR § 73-621; and

WHEREAS, in support of this contention, the applicant furnished certificates of occupancy for the subject building from 1954 and 1970; and

WHEREAS, the applicant proposes to enlarge the existing residence from 1,986 square feet of floor area (0.5 FAR) to 2,181 square feet of floor area (0.55 FAR); and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 2,000 square feet (0.5 FAR) under ZR § 23-142; and

WHEREAS, accordingly, the applicant represents that the proposed floor area does not exceed the floor area permitted as of right by more than 10 percent; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the

MINUTES

applicant submitted a photographic streetscape study and a neighborhood land-use study demonstrating that the modest enlargement at the rear of the subject building fits in with the built conditions of the surrounding area; and

WHEREAS, by determination dated October 5, 2018, DOB states that it has “no objection to this community residence being occupied as a one family dwelling (J-3/R-3) occupancy group, based on DOB memo issued March 10, 1980 by Commissioner Irwin Fruchtmann, P.E., for this altered building application”; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA035Q, dated September 17, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-621 and 73-03 to *permit*, in an R3-1 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, contrary to ZR § 23-142; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received July 19, 2019”-Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 2,181 square feet of floor area (0.55 FAR), as illustrated on the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-149-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-156-BZ

CEQR #19-BSA-040Q

APPLICANT – Sheldon Lobel, P.C., for PSCH Cypress Avenue Housing Development Fund Corp. d/b/a WellLife Network Inc., owner.

SUBJECT – Application October 12, 2018 – Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 2 residential building (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing contrary to ZR §§ 23-142 (floor area and FAR), 23-142(g) (open space), 23-22 (density regulations), 23-45(a) (front yard), 23-451 (planting requirements), 23-631(d) (front height and setback), 23-632(b) (side setback) and 25-251 (parking). R5 zoning district.

PREMISES AFFECTED – 80-97 Cypress Avenue, Block(s) 3731/3732, Lot(s) 65,54, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 22, 2019, acting on New Building Application No. 420664249, reads in pertinent part:

ZR 23-142 Proposed building is contrary to the maximum permitted floor area/FAR.

ZR 23-22 Proposed no. of dwelling units is contrary to the maximum permitted.

ZR 23-45(a) Proposed building is contrary to the minimum required front yard.

ZR 23-631(d) Proposed building is contrary to the required setback and maximum permitted height.

ZR 23-632(b) Proposed building is contrary to the minimum side setback.

ZR 25-251 Proposed building is contrary to the minimum required parking spaces.; and

WHEREAS, this is an application under ZR §§ 73-

MINUTES

623, 73-03 and 72-21 to permit, in an R5 zoning district, the development of a five-story, with cellar, residential building that does not comply with zoning regulations for floor area, front yards, height and setbacks, side setbacks and parking, contrary to ZR §§ 23-142, 23-22, 23-45, 23-631, 23-632 and 25-251; and

WHEREAS, this application is filed on behalf of WellLife Network Inc. (the “Applicant”), a not-for-profit developer of affordable housing whose mission is to provide housing and shelter for low-income populations and those in need of supportive social services; and

WHEREAS, the Applicant has provided housing and support services to over 2,000 individuals in the City of New York and on Long Island; has operated its diverse affordable-housing programs for more than 36 years; and has also partnered with CSD Housing, LLC, a development consultant, to ensure the practicability and feasibility of developing the proposed building in accordance with the Applicant’s mission; and

WHEREAS, a public hearing was held on this application on March 26, 2019, after due notice by publication in *The City Record*, with continued hearing on June 11, 2019, and then to decision on July 23, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, residents of the surrounding area submitted testimony in support of this application and in opposition to this application, citing concerns with parking, the size of the proposed building, privacy for adjacent residences, crime, litter, overcrowding of schools, property values and neighborhood character; and

WHEREAS, the subject site is located on the northeast corner of Cypress Avenue and 59th Street, in an R5 zoning district, in Queens; and

WHEREAS, the subject site has approximately 218 feet of frontage along Cypress Avenue, 42 feet of frontage along 59th Street, 18,546 square feet of lot area and is occupied by an unfinished three-story building slated for demolition; and

WHEREAS, the Applicant proposes to develop a five-story, with cellar, residential building with 45,075 square feet of floor area (2.43 FAR); 66 dwelling units; front yards with depths of 17’-1” along the northern portion of 59th Street, 1’-0” along the eastern unbuilt portion of 59th Street and 10’-0” along Cypress Avenue; along Cypress Avenue, a street wall height of 37’-9” with a setback of 12’-6” and a building height of 47’-9”; along 59th Street, a street wall and building height of 47’-9” without setback; no side setback for the portion of the building above 33’-0”; and 13 off-street accessory parking spaces; and

WHEREAS, in response to community concerns and at the Board’s request, the proposed site plan reflects a number of changes from its original design, including the following: a densely landscaped buffer area with tall trees and lower-

lying bushes to the west of the proposed building to serve as a visual amenity to neighboring residents and to ensure residents’ privacy; a residential-style metal picket fence wrapping around the western portion of the subject site without gates; and street trees within the bed of 59th Street along the entire perimeter of the subject site; and

WHEREAS, the Applicant also modified the design of the subject building to comply with zoning regulations for open space and planting and to reduce the height of the building from six stories to five stories; and

WHEREAS, the Applicant represents that, at the subject site, floor area may not exceed 23,182 square feet (1.25 FAR) under ZR § 23-142; there may be no more than 31 dwelling units under ZR § 23-22; front yards must have minimum depths of 10 feet or, where the depth exceeds 10 feet, a minimum depth of 18 feet under ZR § 23-45; street wall heights may not exceed 30 feet with a minimum setback of 15 feet above the street wall and a maximum height above base plane of 40 feet under ZR § 23-631; there must be a side setback of at least 7’-4.5” at 33 feet above base plane under ZR § 23-632; and 28 accessory off-street parking spaces are required under ZR § 25-251; and

WHEREAS, [ZR § 73-623](#) provides:

For *developments* or *enlargements* of *Quality Housing buildings* in which at least 50 percent of the *dwelling units* are *income-restricted housing units*, or at least 50 percent of its total *floor area* is a *long-term care facility* or philanthropic or non-profit institution with sleeping accommodation, the Board of Standards and Appeals may modify the underlying *bulk* regulations, other than *floor area ratio*, provided that in no event shall such *building* height or the number of *stories* therein exceed those set forth in paragraph (b) of Section [23-664](#) (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), and provided that the Board finds that:

- (a) there are physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or topographical features that create practical difficulties in complying with the *bulk* regulations for *Quality Housing buildings* and would adversely affect the *building* configuration or site plan;
- (b) the practical difficulties of developing on the *zoning lot* have not been created by the owner or by a predecessor in title;
- (c) the proposed modifications will not unduly obstruct access of light and air to adjoining properties or *streets*;
- (d) the proposed scale and placement of the *development* or *enlargement* relates harmoniously with the surrounding area; and
- (e) the requested modification is the least amount necessary to relieve such practical

MINUTES

difficulties.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Applicant submitted evidence that 50 percent or more of the dwelling units in the proposed building constitute “income-restricted housing units” under the Zoning Resolution because 100 percent of said units are proposed as permanently income-restricted; and

WHEREAS, the Applicant further notes that the proposed building does not exceed total height or the number of stories set forth in ZR § 23-664(b); and

WHEREAS, the Applicant states that the subject site has an irregular shape that constrains floorplates and creates practical difficulties in complying with applicable bulk regulations for Quality Housing buildings; and

WHEREAS, in support of this contention, the Applicant submitted as-of-right drawings demonstrating that a complying building would have limited floorplates that would only support a total of 26 dwelling units and have an adversely affected site plan because of zoning regulations for front yards, height and setback, side setbacks and parking; and

WHEREAS, accordingly, the Board finds that the above physical conditions create practical difficulties in complying with applicable bulk regulations for Quality Housing buildings that adversely affect an as-of-right building’s configuration or site plan; and

WHEREAS, the Applicant states that the above practical difficulties are not self-created; and

WHEREAS, the Board finds that the above practical difficulties inherent in developing the zoning lot have not been created by the owner or a predecessor in title; and

WHEREAS, the Applicant states that the proposed building will not unduly interfere with the provision of light and air to adjacent sites or streets; and

WHEREAS, the Applicant notes that the proposed building provides a landscaped buffer area with a depth of 20 feet along the western lot line and that the proposed site plan is arranged to place the massing of the proposed building closer to the unimproved portion of 59th Street with additional landscaping located along the eastern lot line in the form of a planting area as well as the provision of street trees; and

WHEREAS, the Applicant notes that the subject site is adjacent to open cemeteries to the north, east and south that will not have light or air adversely affected by the proposed building; and

WHEREAS, the Board finds that the proposed modifications will not unduly obstruct access of light and air to adjoining properties or streets; and

WHEREAS, the Applicant states that the proposed building maintains a harmonious relationship with the surrounding area; and

WHEREAS, the Applicant notes that the proposed building is surrounded by cemeteries on three sides, that the unimproved portion of 59th Street serves as an additional

buffer between the subject site and surrounding uses and that the landscaped area along the western lot line with decorative fencing ensures that the privacy of adjacent residences will be maintained while providing a visual amenity to residents of the surrounding area; and

WHEREAS, in support of this contention, the Applicant submitted a study of the surrounding area demonstrating that the height of the proposed building is consistent with the built character of residential buildings in the vicinity; and

WHEREAS, the Applicant also modified the design of the proposed building to remove the rooftop parapet, employing a decorative open railing to reduce the visual impact of the proposed building’s height; and

WHEREAS, the Board finds that the proposed scale and placement of the proposed building relates harmoniously with the surrounding area; and

WHEREAS, the Applicant submits that the requested modifications are the least necessary to relieve the above practical difficulties; and

WHEREAS, in support of this contention, the Applicant submitted a study detailing its programmatic needs as a developer of affordable housing (the “Programmatic Needs Report”) and drawings for an as-of-right building that reflect that the proposed modifications are the minimum necessary to afford relief; and

WHEREAS, in response to questions from the Board at hearing, the Applicant further submitted evidence that neither increasing the depth of the front yard along the unimproved portion of 59th Street nor providing additional sub-grade parking spaces would be feasible; and

WHEREAS, the Board finds that the requested modifications are the least necessary to relieve the above practical difficulties; and

WHEREAS, the Applicant submits that the beneficial use of the proposed building will outweigh any potential disadvantages to the community at large; and

WHEREAS, in support of this contention, the Applicant submitted a parking study demonstrating that the proposed building will have a peak parking demand of 13 spaces during the hours of 7:00 a.m. to 10:00 a.m. and 4:00 p.m. to 7:00 p.m., which will be accommodated by the 13 off-street accessory parking spaces proposed; and

WHEREAS, the Applicant further notes that, because of the distance of the subject building from public transit, the Applicant proposes a shuttle to transport passengers to public transit that will operate with increased frequency during periods of peak demand and that will further provide access to overflow parking at a lot located at 450 Wyckoff Avenue, Brooklyn; and

WHEREAS, the Applicant submitted a draft restrictive declaration to be recorded against the subject property that provides, in pertinent part, that “[a] shuttle service will be provided from the Premises to public transportation, which will operate with peak and off-peak hours” to ensure the continued operation of the proposed shuttle service; and

WHEREAS, the Board finds that, under the conditions

MINUTES

and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk and parking regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk and parking regulations will not interfere with any pending public improvement project; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, the Applicant states that there are unique physical conditions inherent in the subject site—namely its irregular shape—that create practical difficulties or unnecessary hardship in complying strictly with applicable bulk regulations by constraining the floorplates of an as-of-right building; and

WHEREAS, the Applicant submits that an as-of-right building would only accommodate 26 dwelling units for use as affordable housing, which would not meet the Applicant’s programmatic needs; and

WHEREAS, in support of this contention, the Applicant provided the Programmatic Needs Report, detailing its programmatic needs as a developer of affordable housing; and

WHEREAS, the Programmatic Needs Report demonstrates that the Applicant must build a minimum of 66 units of affordable housing in a development with a total floor area of approximately 45,074 square feet (2.43 FAR) to meet its programmatic needs and satisfy public financing criteria and related regulatory and policy guidelines; and

WHEREAS, primarily, however, the Applicant relies on an extension of the deference afforded educational and religious institutions under the law of the State of New York as to zoning, known as the *Cornell Doctrine*, that obviates the need for the Board to find “unique physical conditions,” ZR § 72-21, to not-for-profit affordable developers seeking bulk waivers to facilitate the development of projects that provide 100 percent affordable housing to low-income earners for the life of the building; and

WHEREAS, *Cornell University v. Bagnardi*, 68 NY2d 583 (1986) holds that, while zoning boards retain discretion, educational or religious institutions’ land use applications are generally to be granted unless they can be shown to have a net negative impact on the health, safety or welfare of the community, though general concerns about traffic and disruption of the residential character of the neighborhood, for instance, are insufficient grounds upon which to deny such applications; and

WHEREAS, the Applicant submitted a thorough analysis of the origins of the *Cornell Doctrine* demonstrating a natural link between public policies aimed at protecting houses of worship and schools and those aimed at facilitating the development of housing for low-income earners, people with disabilities and the formerly homeless; and

WHEREAS, in particular, the Applicant asserts that the provision of affordable housing, much like that of educational institutions and houses of worship, is in furtherance of the public health, safety, welfare and morals and a fundamental interest of the state, as evidenced by a 1965 amendment to the New York State Constitution that authorized the legislature to provide for “low rent housing and nursing home accommodations for persons of low income as defined by law,” New York Constitution, article XVIII, § 1; and

WHEREAS, the Applicant submits that both New York City and State have long recognized the importance of accessibility to safe and high-quality affordable housing, as further evidenced by the New York State Tenement House Act of 1901, which banned the construction of dark and poorly ventilated tenement buildings and required that newly constructed tenement buildings be built with outward facing windows in every room, open courtyards, indoor toilets and fire safeguards; the Multiple Dwelling Law of 1929, which established proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards essential to the public welfare; the New York City Housing Authority, created in 1934 to provide housing for low- and moderate-income residents and currently the largest public housing authority in North America; the Mitchell-Lama Housing Program, created by the New York State Legislature in 1955 to provide affordable rental and cooperative housing to moderate- and middle-income residents; and the Loft Law, an article of the Multiple Dwelling Law enacted in 1982 requiring residential conversions of commercial and manufacturing buildings to comply with minimum housing standards in order to ensure the health and safety of the buildings’ residential tenants; and

WHEREAS, in the 1980s, the federal government expanded the availability and use of Section 8 Housing Choice Vouchers, utilized by very low-income families, the elderly and the disabled to acquire safe housing in the private housing market, and introduced the Low-Income Housing Tax Credit program, which gives state and local agencies authority to issue tax credits for costs associated with the acquisition, rehabilitation or construction of rental housing for low-income earners, while New York City Mayor Edward Koch’s administration initiated and enforced tax foreclosures on properties that were one year or more in tax arrears in an effort to increase public revenue after the fiscal crisis of 1977—an act that made the City of New York the largest owner of land within the City of New York with title to more than 100,000 vacant and partly occupied apartments—and eventually designated \$5.1 billion in city and federal funds to rebuild entire neighborhoods as part of Koch’s Ten-Year Affordable Housing Plan (1986-1996); and

WHEREAS, in the 1990s, New York City Mayors David Dinkins and Rudolph Giuliani’s administrations extended the City’s commitment to Mayor Koch’s affordable housing plan, which led to the rehabilitation and

MINUTES

development of over 180,000 units between 1987 and 2000; and

WHEREAS, New York City Mayor Michael Bloomberg's administration also made commitments to creating and preserving affordable housing with the New Housing Marketplace Plan (July 2003), which originally committed \$3.4 billion to build and preserve 68,000 affordable housing units by 2008, but doubled its goal in February 2006 with \$7.5 billion dedicated to build and preserve 165,000 affordable housing units over the next ten years; and

WHEREAS, in 2014, current New York City Mayor Bill de Blasio introduced the Housing New York, a five-borough ten-year plan aiming to create and preserve 200,000 affordable housing units by 2024 through, among other initiatives, encouraging the development of affordable housing on underutilized public and private sites, promoting housing for seniors and the formerly homeless and creating the Mandatory Inclusionary Housing program, which, per ZR § 24-92, was "established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood diversity and thus *to promote the general welfare*," (emphasis added) and requires that a certain proportion of new housing developed in connection with certain zoning actions be permanently affordable; and

WHEREAS, in spite of these professed policy goals, the Applicant asserts that the City of New York is in the midst of an affordable housing crisis due to, among other things, incredible population growth; a demand for low- and moderate-income affordable housing units that outpaces the supply of those units and, relatedly, a rise in residential rents that outpaces income growth; the steady decrease in the number of rent controlled and rent stabilized (collectively, "rent regulated") units; and the aversion of residents located near proposed low-income affordable housing developments to such projects out of fear that such developments will decrease area property values and adversely affect the neighborhood's quality of life, a response that often leads to the abandonment of those projects; and

WHEREAS, the Applicant notes that the New York City Rent Guidelines Board, charged with establishing rent increases for the dwelling units subject to the Rent Stabilization Law, found that, since 1994, nearly 250,000 units of rental housing have been removed from rent regulation protection, resulting in a net loss of 16 percent of the total stock of rent regulated affordable housing units from 1994 to 2012; in addition, many buildings, for which the regulatory requirement to be available at affordable rents has expired, have opted out of affordability programs and opted, instead, to pursue market rate or homeownership options, leading to a loss of another 68,000 units of affordable housing from the four largest subsidy programs; and

WHEREAS, in furtherance of their submission that the provision of affordable housing for low-income earners is generally, like education and free exercise of religion, in

furtherance of the public health, safety, welfare and morals, the Applicant notes that when residents have to spend a large percentage of their income on housing, less money is available for those residents' other basic living needs like food or healthcare, which can lead to negative health outcomes, particularly for people with disabilities; the insufficient supply of low-income affordable housing also results in overcrowded housing and familial instability, necessitating frequent moves and increases in the rate of homelessness; and

WHEREAS, the Applicant submits that providing low-income affordable housing units sufficient to meet the demand, thereby meeting residents' most basic need for shelter, enables residents to more actively participate in the local economy, acquire other life essentials like nutritious food and medicine, access more stable employment opportunities and altogether improves residents' quality of life; and

WHEREAS, when such housing is provided by mission-based not-for-profit institutions, in particular, the Applicant avers that these positive outcomes are more assured because of the developer's focus on the residents rather than financial profit and because the mission of the not-for-profit housing developer is to build, manage and maintain affordable housing and not package it for resale or for the building's future "upside" potential, as would be the goal for a for-profit developer; and

WHEREAS, the Applicant submits that additional methods of facilitating the development of affordable housing for low-income residents, such as the proposed extension of the *Cornell Doctrine* herein, are necessary to close the gap between the supply and demand for low-income affordable housing since, unlike market rate or mixed-income (market rate units combined with affordable units at varying degrees of affordability) housing development projects, low-income affordable housing can only be developed in reliance on government grants and subsidies and on adequate unit counts that facilitate economies of scale; and

WHEREAS, while the Board recognizes that the record does not reflect any instance in which New York State courts have declined to extend or apply the *Cornell Doctrine* to a 100 percent low-income affordable housing development, the Board notes instances in which New York State courts have applied the doctrine with the flexibility and factual specificity inherent in land use decisions including *Matter of Unitarian Universalist Church of Central Nassau v. Shorten*, 63 Misc 2d 978 (Sup Ct Nassau County 1970) (ruling that a day care center housed in an existing church, but operated by a separate not-for-profit corporation, was religious activity protected by the First Amendment because it shared a site with a house of worship and did not require a special permit, the application for which was denied, both because the Village zoning ordinance necessitating the special permit conflicted with and hindered State law and policy that favored the creation of facilities suitable for the care of pre-school and primary school aged children);

MINUTES

McGann v. Village of Old Westbury, 186 Misc 2d 661 (Sup Ct Nassau County 2000) *aff'd* 293 AD2d 581 (2d Dept 2002) (off-site Roman Catholic cemetery constituted a “religious use” entitled to deference based on, among other things, evidence that cemeteries are places of worship in their own right in Roman Catholic theology); *East Hampton Library v. Zoning Board of Appeals of Village of East Hampton*, 31 Misc 3d 1231(A), 2011 NY Slip Op 50921(U) (Sup Ct Suffolk County 2011) (land use applications filed to facilitate a library operated by the University of the State of New York were entitled to educational deference both because the library was chartered by an institute of higher education and because it provided numerous instructional programs, classes, lectures and lessons, which are all educational in nature); and

WHEREAS, the Board additionally notes instances in which the Board, itself, has extended the *Cornell* Doctrine to permit the enlargement of hospitals associated with degree-granting educational institutions, including New York Presbyterian Hospital (BSA Cal. No. 325-12-BZ) (June 11, 2013), Mount Sinai Hospital (BSA Cal. No. 170-13-BZ) (September 10, 2013), Memorial Hospital for Cancer and Allied Diseases (BSA Cal. No. 183-11-BZ) (June 19, 2012), and St. Barnabas Hospital (BSA Cal. No. 246-08-BZ) (May 19, 2009); and

WHEREAS, the Board notes that the purpose of the extension of the *Cornell* Doctrine in the context of facilitating the development of housing units affordable for extremely low-, very low- and low-income earners is that in the absence of the requested bulk waivers, the Applicant is unable to provide enough units to make the development financially viable and will ultimately create zero affordable housing units; mixed-income housing developments, in contrast, utilize market rate and moderate-income housing units to subsidize the low-income units, often obviating any need for government assistance in the form of financial subsidies or zoning relief; and

WHEREAS, thus, the Board finds that its cabining of the extension of the *Cornell* Doctrine to facilitate only the development of 100 percent low-income affordable housing for the life of the development will not create a slippery slope because the extension is so narrowly defined both in terms of the use for which it may be applied and the emergency the deference is meant to address—the crisis-level insufficiency of housing units in New York City that are actually affordable for low-income earners; and

WHEREAS, according to the Association for Neighborhood and Housing Development (“ANHD”), an umbrella organization of 100 not-for-profit affordable housing development groups serving New York City, in 2015, extremely low- to low-income earners (those earning 10-100 percent area median income (“AMI”)) made up 67 percent of New York City’s population with extremely low-income earners (those earning 10-30 percent AMI) constituting 27 percent of New York City’s population overall, very low- to low-income earners (those earning 40-80 percent AMI) making up 30 percent of New York City’s

population overall and low moderate-income earners (those earning 90-100 percent AMI) making up only approximately 9 percent of New York City’s population overall; and

WHEREAS, thus, extremely low- to low-income residents, 57 percent of New York City’s residents, suffer the most from the housing crisis and developments proposed to provide low-income affordable housing are most often subjected to strong opposition by existing residents, in much the same way that protectionist residents oppose houses of worship and educational facilities; and

WHEREAS, the Board recognizes the natural link between the public policy initiatives that have been put in place over decades by various levels of government aimed at supporting and defending religious and educational institutions and the development of buildings designed to facilitate those institutions’ goals and that similar public policy initiatives have been aimed at housing the homeless and the underprivileged and encouraging the provision of affordable housing; and

WHEREAS, the Board acknowledges that the provision of affordable housing, especially low-income housing that is truly affordable, has been a major priority for New York City, State and federal administrations; and

WHEREAS, however, the Board finds unequivocally, that to prevent abuse—i.e., reliance on the *Cornell* Doctrine to facilitate projects that include any amount of market rate housing or less than 100 percent affordable housing for low-income persons for the life of the building—the extension of the doctrine must be restricted to (1) not-for-profit entities, (2) with an extensive history of developing and managing 100 percent low-income affordable housing, (3) for developments with restricted rents that are, in their entirety, targeted to extremely low-, very low- and low- income earners, (4) that will remain rent-restricted to such earners for the life of the development; and

WHEREAS, specifically, the Board states that the expansion of the *Cornell* Doctrine considered herein would not be available for projects that will not remain 100 percent affordable for the life of the development (i.e. are only required to remain affordable subject to a termed regulatory agreement) or to for-profit developers where only a portion of the development will qualify as low-income affordable housing; and

WHEREAS, in addition, the Board finds that the expansion of the *Cornell* Doctrine, for cases like this application is one way to respond to the clear housing emergency presently facing New York City; and

WHEREAS, in response to community concerns, the Board notes that the expansion of the *Cornell* Doctrine considered herein is intended to balance the need for affordable housing and the extreme shortage of units in New York City directed to households at or below 60 percent AMI with the potential impact of such developments on the surrounding community; and

WHEREAS, in this case the Applicant has a very long history of developing and managing 100 percent affordable housing for low-income New Yorkers and its primary focus

MINUTES

as an institution is in providing and maintaining this kind of low-income housing; it is also important that under this application, the proposed housing will remain affordable for the life of the development, otherwise bulk variances would not be appropriate because they last for the life of the building; and

WHEREAS, therefore, for all of the reasons set forth herein, the Board finds that it is appropriate to extend the *Cornell* Doctrine to this application as proposed herein; and

WHEREAS, because the Board finds that the Applicant, as a not-for-profit developer of 100 percent low-income affordable housing to be kept affordable to low-income earners for the life of the development, is entitled to deference similarly afforded to educational and religious institutions under the law of the State of New York as to zoning, the Applicant is able to rely on its programmatic needs in support of the subject variance application; and

WHEREAS, as with religious and educational institutions, not-for-profit entities that wish to avail themselves of this extension of the *Cornell* Doctrine to not-for-profit 100 percent low-income housing developments will be required to demonstrate that the waivers requested are directly related to the public policy goal justifying the expansion and the entity's programmatic needs—to wit, the provision of 100 percent low-income housing units—and that the waivers requested are the minimum necessary to ensure a viable project that meets State and City requirements for subsidies; and

WHEREAS, further, the Applicant has not demonstrated a practical difficulty or unnecessary hardship resulting from a unique physical condition at the site that could support the grant of additional waivers to support a programmatic preference that falls outside of the provision of affordable housing for low-income earners; and

WHEREAS, the Applicant states that the proposed building has been designed based on its experience in developing low-income affordable housing; and

WHEREAS, the Applicant asserts that an as-of-right development at the site, consisting of 26 units instead of the 66 proposed in this application, is untenable because buildings with such low low-income affordable unit counts are unlikely to be funded and, without such funding, built; additionally, by constructing more units, the Applicant is able to obtain government funding from additional sources and, thus, develop a 100 percent affordable supportive housing project for low-income earners at the site; and

WHEREAS, the Applicant's consultant asserts that the per unit cost of the as-of-right development at the site is exceptionally high and fails to meet the income-to-expense ratio that makes obtaining financing for the development—and thus, its eventual construction and operation—possible; and

WHEREAS, based on the above, the Board finds that because the subject proposal is a 100 percent low-income housing development that will remain affordable to low-income households for the life of the building, that the project is proposed to be developed by an experienced not-

for-profit developer and because the waivers requested are directly related to the public policy goal of the provision of 100 percent low-income housing units, the subject proposal is entitled to deference under the herein expanded *Cornell* Doctrine, hence no finding of unique physical conditions, practical difficulty or unnecessary hardship need be found; and

WHEREAS, the Applicant states that, because the Applicant is a not-for-profit organization and the variance is necessary to accommodate its mission to provide affordable housing, the Board need not find that there is no reasonable possibility that strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the Applicant submits that the proposed development would not affect neighborhood character or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the Applicant provided a neighborhood character study demonstrating that the subject site is an irregularly shaped lot uniquely situated at the edge of the subject neighborhood with cemeteries located along three of its sides and that the height of the proposed development comports with other residential buildings in the surrounding area; and

WHEREAS, in response to community concerns and questions from the Board, the Applicant also modified the design of the proposed development by reducing the building height and replacing the proposed rooftop parapets with open railings to reduce the vertical massing; and

WHEREAS, with respect to the Board's accessibility concerns regarding a ramp originally proposed at the rear entrance of the building, the Applicant submits that the above height reduction was enabled by placing the first story at grade to increase the accessibility of the building design without the need for a ramp, which in turn allowed further shifting of the building mass away from surrounding residences toward the unbuilt portion of 59th Street so as to decrease the building's visual bulk; and

WHEREAS, the Applicant further notes that the subject site's adjacency to the unbuilt portion of 59th Street provides additional spacing from surrounding uses; and

WHEREAS, the Applicant also proposes a densely landscaped buffer area with tall trees and lower-lying bushes to the west of the proposed building to serve as a visual amenity to neighboring residents and to ensure residents' privacy; a residential-style metal picket fence wrapping around the western portion of the subject site without gates; and street trees within the bed of 59th Street along the entire perimeter of the subject site; and

WHEREAS, in response to community concerns, the Applicant submits that the proposed site plan would allow the unbuilt portion of 59th Street to remain closed to address residents' traffic concerns, the parking study indicates that the parking demand will be accommodated on-site and will be further addressed by use of a shuttle service, residents of the proposed building will be members of the community and will not increase crime, fencing and landscaping will address privacy concerns and will be maintained to prevent

MINUTES

any accumulation of litter, there are expected to be 10–15 families with school-age children residing in the building which would not result in overcrowding of schools in the area, productive use of the subject site is expected to enhance the community and attendant property values and the Applicant's experience as a non-profit developer of affordable housing demonstrate its support and commitment to the community; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the Applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the Applicant submitted evidence that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the Programmatic Needs Report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA040Q, dated July 23, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated July 24, 2018, the New York City Landmarks Preservation Commission ("LPC") represents that the proposed project would not result in any adverse impacts on architectural or archaeological resources; and

WHEREAS, by correspondence dated December 4, 2018, LPC represents that the proposed project would not result in any adverse impacts with respect to shadows; and

WHEREAS, by letter dated May 10, 2019, the New York City Department of Environmental Protection ("DEP") states that the proposed project would not result in any potential for significant adverse impacts in regards to noise on condition that the proposed project's HVAC equipment comply with the New York City Noise Code, that a

composite window-wall attenuation of 31 dBA be required for the south, west and east building facades and that an alternate means of ventilation be required and incorporated into building design and construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-623, 73-03 and 72-21 and that the Applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-623, 73-03 and 72-21 to *permit*, in an R5 zoning district, the development of a five-story, with cellar, residential building that does not comply with zoning regulations for floor area, front yards, height and setbacks, side setbacks and parking, contrary to ZR §§ 23-142, 23-22, 23-45, 23-631, 23-632 and 25-251; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received July 23, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 45,075 square feet of floor area (2.43 FAR); 66 dwelling units; front yards with minimum depths of 17'-1" along the northern portion of 59th Street, 1'-0" along the eastern unbuild portion of 59th Street and 10'-0" along Cypress Avenue; along Cypress Avenue, a maximum street wall height of 37'-9" with a setback of 12'-6" and a maximum building height of 47'-9"; along 59th Street, a maximum street wall and building height of 47'-9" without setback; no side setback for the portion of the building above 33'-0"; and 13 off-street accessory parking spaces, as illustrated on the Board-approved drawings;

THAT a restrictive declaration shall be recorded against the property prior to the issuance of the Board's resolution (City Register File No. 2019000250237) substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated this ____ day of _____, 2019, is entered into by PSCH CYPRESS AVE. HOUSING DEVELOPMENT FUND CORP. (the "Declarant"), a New York not-for-profit corporation having an office at 22-44 119th Street, College Point, NY 11356.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New

MINUTES

York, Borough of Queens, being known and designated as Block 3731, Lot 65 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the "Premises"); and

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2018-156-BZ (the "Application"), that the New York City Board of Standards and Appeals (the "Board") grant a special permit, under New York City Zoning Resolution ("ZR") § 73-623, and a variance, under ZR § 72-21, to permit the development of a new five-story building at the Premises with 66 supportive and affordable housing units, contrary to ZR §§ 23-142 (floor area and FAR), 23-22

(density), 23-45(a) (front yard), 23-631(d) (height and setback), 23-632(b) (side setback) and 25251 (parking) within the subject R5 zoning district (the "Proposed Development"); and

WHEREAS, the special permit requires at least 50 percent of the #dwelling units# (as defined in ZR § 12-10) in a development to be #income-restricted housing units#, which is defined in ZR § 12-10 as a #dwelling unit# that complies with the definition of #affordable housing unit# set forth in ZR § 23-911 (General definitions), or any other #dwelling unit# with a legally binding restriction limiting rents to be affordable to households with incomes at or below 80 percent of the #income index#, as defined in ZR § 23-911 and as prescribed by a City, State or Federal agency, law, regulation or regulatory agreement, for a period of not less than 30 years; and

WHEREAS, pursuant to ZR § 23-911, an #affordable housing unit# includes a #dwelling unit# that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a regulatory agreement, to occupancy by certain households, and a #supportive housing unit# within a #supportive housing project#, as both terms are defined in ZR § 23-911; and

WHEREAS, 100 percent (100%) of the dwelling units in the Proposed Development are proposed to qualify as #affordable housing units# consistent ZR § 23-911; and

WHEREAS, the Board requires the Declarant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Application, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be legally

responsible for compliance with the following restrictions:

1. All #dwelling units# in the Proposed Development will either be very low- or low-income #affordable housing units#;
2. All #dwelling units# in the Proposed Development will be provided to tenants whose annual income is at or below sixty percent (60%) of Area Median Income ("AMI");
3. Sixty percent (60%) of the #dwelling units# will be allocated as #supportive housing units#, and forty percent (40%) of the #dwelling units# will be allocated as #affordable housing units#;
4. All #dwelling units# in the Proposed Development will remain as #affordable housing units# for the life of the building;
5. A shuttle service will be provided from the Premises to public transportation, which will operate with peak and off-peak hours;
6. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
7. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
8. Failure to comply with the terms of this declaration which remain uncured within thirty (30) days of Declarant's receipt of a notice to comply may result in the revocation of a building permit or Certificate of Occupancy, as well as any other authorization or waiver granted by the Board, including but not limited to, the Application; and
9. In the event that (a) the Declarant elects to abandon the Application, (b) the underlying zoning district is changed such that the relief provided by the Application is no longer required, or (c) the Premises becomes subject to a Regulatory Agreement with the New York City Department of Housing Preservation and Development or any other applicable agency of the City of New York or State of New York, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

IN WITNESS WHEREOF, Declarant has made and executed this Declaration as of the date

MINUTES

hereinabove written.

THAT a shuttle service shall be provided from the subject site to public transportation that operates with peak and off-peak hours;

THAT landscaping shall be provided and maintained in top condition with vegetation replaced as necessary, as reflected in the Board-approved drawings;

THAT all dwelling units in the building shall be provided to tenants whose annual income is at or below sixty percent 60 percent of Area Median Income as affordable housing units for the life of the development, as set forth in the restrictive declaration;

THAT street trees shall be planted and maintained in close intervals along 59th Street, as reflected in the Board-approved drawings;

THAT HVAC equipment shall comply with the New York City Noise Code;

THAT a composite window-wall attenuation of 31 dBA shall be required for the south, west and east building facades;

THAT an alternate means of ventilation shall be required and incorporated into building design and construction;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-156-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2018-180-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Corporate Commons Three, LLC, owner.

SUBJECT – Application November 15, 2018 – Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district.

PREMISES AFFECTED – 1441G South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....4

Abstain: Chair Perlmutter.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 17, 2018, acting on New Building Application No. 520328244, reads in pertinent part:

“Proposed roof parking . . . is contrary to section 44-11 of the NYC Zoning Resolution and requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-49”; and

WHEREAS, this is an application under ZR §§ 73-49 and 73-03 to permit, in an M1-1 zoning district, parking on the roof of a proposed accessory parking garage, contrary to ZR § 44-11; and

WHEREAS, a public hearing was held on this application on May 7, 2019, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019, June 4, 2019, July 16, 2019, and then to decision on July 23, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of South Avenue, in an M1-1 zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 557 feet of frontage along South Avenue, 666 square feet of frontage along Teleport Drive to the south, 502 feet of frontage along Teleport Drive to the west, 373,838 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 26, 2019, when, under BSA Calendar Number 2018-107-BZ, the Board granted a variance to permit the development of a mixed-use community-facility and commercial building for use as a school (Use Group 3) on the first, third, fourth and fifth floors that does not comply with zoning regulations for use on condition that the applicant work with the Department of Transportation to ensure school safety and make whatever changes are recommended by the Department of

MINUTES

Transportation to improve and ensure the safety of school children; that, at the fourth floor, the corridor that gives onto the School's elementary classrooms designated 415, 416, 417 and 421—illustrated on sheet BSA-204 of the Board-approved drawings—be separated with double doors that swing in the direction of egress that are locked and equipped with panic hardware to meet applicable fire-egress requirements so as to ensure and provide security and isolate that corridor of the School building; that the gate on the loading berth be kept closed during all arrivals and departures of children; that elevator S2 be dedicated to school use without access by other tenants in the building; that security controls as indicated on the Board-approved drawings be implemented; that sound attenuation be installed in the school building, as indicated on the Board-approved plans; and that traffic improvement measures be implemented, as described in Tech Memo 002; and

WHEREAS, ZR § 73-49 provides that:

In C2-1, C2-2, C2-3, C2-4, C4-1, C4-2, C4-3, C4-4, C7, C8-1, C8-2, C8-3, M1-1, M1-2, M1-3, M2-1, M2-2 or M3-1 Districts, the Board of Standards and Appeals may permit the parking or storage of motor vehicles on the roof of a *public parking garage* with a total of 150 spaces or less and, in all districts, the Board may permit modifications of the applicable provisions of Sections [25-11](#), [36-11](#) or [44-11](#) (General Provisions) so as to permit *accessory* off-street parking spaces to be located on the roof of a *building*. As a condition of permitting such roof parking, the Board shall find that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for setback of roof parking areas from *lot lines*, or for shielding of floodlights; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to develop a two-story parking garage with a total of 415 accessory off-street parking spaces, 135 of which are proposed as roof parking; and

WHEREAS, the applicant states that the proposed parking garage would constitute an accessory use and would not have a limitation on its hours of operation; and

WHEREAS, the applicant submits that there are no residential uses in the vicinity and that roof parking would not result in any adverse effects on the surrounding area; and

WHEREAS, by letter dated May 23, 2019, the New York City Department of Transportation (“DOT”) states that it has no concerns about roof parking proposed on the

garage; and

WHEREAS, the Board finds that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas; and

WHEREAS, by letter dated May 23, 2019, DOT further states that the parking garage entrance and exit shall be moved to Teleport Drive so that they do not interfere with school uses; stop bars, stop markings and stop signs shall be added inside the proposed street level parking lot; separate left turn and right turn lanes shall be provided for traffic exiting from Teleport Avenue to South Avenue to reduce delays and queuing during peak hours of use; a sidewalk shall be added on the east side of the driveway from the proposed South Avenue parent entrance to the proposed Corporate Commons Three with sidewalks aligning with crosswalks and pedestrian ramps; the applicant shall provide more detailed site plans of the Teleport campus which must show the widths of the roadways, sidewalks, moving lanes and parking lanes and locations of the existing and proposed accessible ramps inside the Teleport campus, which plan shall include the sidewalks mentioned above; additional sidewalks shall be constructed throughout the campus so that students can safely walk a direct route from the existing Metropolitan Transit Authority bus stop to the proposed school entrance; the design of the proposed roadway from Teleport Drive to South Avenue along the existing SIBFL field and the proposed soccer fields presents safety concerns that shall be addressed by replacing perpendicular parking on the west side of the roadway with parallel parking to reduce the number of complicated vehicular movements taking place in this space, and the proposed parent drop off and pickup area presents safety concerns; and the parent drop off and pick up area shall be reconfigured so students do not have to cross a driveway, curb cut or other vehicular path between the loading zone and school entrance because of safety concerns presented by the existing U-turn for parent vehicles on Teleport Drive shown on the circulation map; and

WHEREAS, in response to questions from the Board regarding the feasibility of reorienting the entrance to the parking garage as suggested by DOT, the applicant submitted a letter dated May 24, 2019, in which the Port Authority of New York and New Jersey states, “At this time, we are not able to approve your request to use Port Authority property, neither Teleport Drive nor the area behind Corporate Commons One parking lot for an entrance or exit for your parking garage”; and

WHEREAS, by letter dated July 22, 2019, the Fire Department states that it objects to DOT's recommendation of installing a new sidewalk from South Avenue to the building entrance; that the sidewalk being recommended through the parking lot, along the vehicle entry, fronting on South Avenue would have an adverse effect on the Fire Department's apparatus; that the sidewalk would obstruct the fire apparatus route between the Port Authority of New York and New Jersey and the building owner; that the department apparatus, specifically the Tower Ladder, would

MINUTES

hinder maneuverability of such apparatus that needs wide turning radii with a smooth surface to operate; and that the Fire Department accordingly requests that the proposed DOT recommendation not be adopted; and

WHEREAS, in response to traffic safety concerns, the applicant revised the site plan for the proposed development to include additional traffic control and safety measures, including stop bars, stop signs, crosswalks, speed tables and “school zone” signs at the requested locations with additional signage posted at the central South Avenue parking entrance prohibiting student drop offs and pickups; and

WHEREAS, the applicant notes that dropping off students along South Avenue is prohibited and has not occurred with respect to other schools that have been located adjacent to the subject site in Corporate Commons One and Two for years; and

WHEREAS, the applicant submitted evidence that there will be limited overlap between school arrivals (7:00 a.m. to 8:00 a.m.) and departures (2:00 p.m. to 4:00 p.m.) and commuter’s arrivals and departures during standard business hours; and

WHEREAS, the applicant submits that, in accordance with conditions imposed by the Board under BSA Calendar Number 2018-107-BZ, it will continue to work with the Department of Transportation to ensure school safety at the subject site; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed roof parking is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed roof parking will not interfere with any pending public improvement project; and

WHEREAS, the project is part of the Teleport Site A project that is classified as an Unlisted action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Mayor’s Office of Environmental Coordination, as lead agency, has conducted an environmental review of the proposed action and documented relevant information about the project in Technical Memorandum 002 (“Tech Memo 002”) dated September 24, 2018, to determine whether proposed changes to the previously approved Teleport Site A project would result in any significant adverse environmental impacts that were not previously addressed in the December 2016 Teleport Site A Environmental Assessment Statement (“Teleport Site A EAS”; CEQR No. 16DME013R, ULURP No. 170156PPR and ULURP No. 170157ZCR) or in Technical Memorandum 001 (“Tech Memo 001”), dated June 29, 2017; and

WHEREAS, Tech Memo 002 concludes that the proposed project is not expected to result in any significant adverse environmental impacts that had not been previously identified in the Teleport Site A EAS or subsequent Tech Memo 001, and the conclusions in the December 9, 2016

Negative Declaration remain valid; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-49 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *adopt* the findings of Tech Memo 002 dated September 24, 2018 prepared by the Mayor’s Office of Environmental Coordination 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 §§ 73-49 and 73-03 to *permit*, in an M1-1 zoning district, parking on the roof of a proposed accessory parking garage, contrary to ZR § 44-11; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received July 15, 2019”-Fifteen (15) sheets; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-180-BZ”), shall be obtained within four (4) years, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M. for continued hearing.

MINUTES

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

2018-143-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; Fithouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for adjourned hearing.

REGULAR MEETING

TUESDAY AFTERNOON, JULY 23, 2019

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2019-58-BZ

CEQR #19-BSA-104Q

APPLICANT – Law Office of Jay Goldstein, for JSB Realty No. 2, LLC, owner; CEC Entertainment d/b/a Chuck E. Cheese's, lessee.

SUBJECT – Application March 19, 2019 – Special Permit (§73-44) to permit the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (*Chuck E. Cheese's*) contrary to ZR §32-21. C2-2 zoning district.

PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 8, 2019, acting on DOB Application No. 421894686, reads in pertinent part:

The proposed Use Group 12A eating and drinking establishment is contrary to Zoning Resolution Section 32-21 as it is not permitted within a C2-2 zoning district; and

WHEREAS, this is an application for a special permit, pursuant to ZR §§ 73-244 and 73-03, to permit the operation of an eating or drinking establishment with entertainment and a capacity of more than 200 persons, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 10, Queens, recommends approval of this application on condition that the grant be operator-specific, to Chuck E. Cheese; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of 79th Street and South Conduit Avenue, within an R4 (C2-2) zoning district, in Queens; and

WHEREAS, the site is an irregularly shaped lot with

MINUTES

approximately 764 feet of frontage along 79th Street, 423 feet of frontage along South Conduit Avenue, 77,132 square feet of lot area is occupied by an existing one- (1) story plus cellar and mezzanine commercial building; and

WHEREAS, ZR § 73-244 reads as follows:

In C2, C3, C4, C6-4, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the *Special Tribeca Mixed Use District 1*, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the *zoning lot* shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the *street*;
- (b) that the entrance to such *use* shall be a minimum of 100 feet from the nearest *Residence District* boundary;
- (c) that such *use* will not cause undue vehicular or pedestrian congestion in local *streets*;
- (d) that such *use* will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (e) that such *use* will not cause the sound level in any affected conforming *residential use, joint living-work quarters for artists or loft dwelling* to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the *building* and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Any violation of the terms of a special permit may

be grounds for its revocation.

* In C4 Districts where such #use# is within 100 feet from a #Residence District# boundary

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to operate an eating or drinking establishment with entertainment and a capacity of more than 200 persons located on the ground floor and mezzanine, which the applicant plans to modify; and

WHEREAS, the applicant represents that the proposed eating or drinking establishment will operate as “Chuck E. Cheese” with the following hours of operation: Sunday through Thursday, 9:00 a.m. to 9:00 p.m., and Friday and Saturday, 9:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the total occupancy will be 456 occupants on the ground floor and proposes to provide two enclosed (2) waiting areas, one (1) on the new mezzanine with 1,904 square feet, which is more than the 1,824 square feet required for 456 occupants, as well as a 210 square foot waiting area on the ground floor, accommodating an additional 52 occupants, to service any patrons in need of assistance; and

WHEREAS, the Board finds that the subject eating or drinking establishment will provide a minimum of four (4) square feet of waiting area within the zoning lot for each person permitted under the occupant capacity determined by the New York City Building Code; and

WHEREAS, the applicant represents that the entrance to the subject building is located over 200 feet away from the nearest residential zoning district, without commercial overlay; and

WHEREAS, the Board finds that the entrance to the proposed eating or drinking establishment is a minimum of 100 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the applicant states that the proposed establishment will be located within an existing large commercial shopping center, used in conjunction with adjoining tax lots, and will contain 570 parking spaces, 20 spaces beyond what would be required as per the Zoning Resolution, and proposes waiting areas larger than is required, such that patrons will be able to wait within the space and not on the streets; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause undue vehicular or pedestrian congestion in local streets; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the applicant submitted a land-use radius diagram demonstrating that the nearest residential use is located over 200 feet away from the subject site and represents that the proposed operation, which is taking over space formerly occupied by a commercial tenant within a large commercial shopping center, does not utilize loud amplified sound and will not pose a risk that would impair the character of the surrounding neighborhood; and

WHEREAS, the Board finds that the subject establishment will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; and

WHEREAS, the applicant states that the proposed operation will not exceed any applicable provision of the New York City Noise Control Code and is located entirely within an existing shopping center; and

WHEREAS, the Board finds that the subject establishment will not cause the sound level in any affected conforming residential use to exceed applicable limits set forth in the New York City Noise Control Code; and

WHEREAS, the applicant has submitted authorizations from the building owner as well as the director of licensing for the operator of the proposed eating or drinking establishment; and

WHEREAS, the Board finds that this application is made jointly by the building owner of and the operator of the subject eating or drinking establishment; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-244 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Short Form, CEQR No. 19BSA104Q, dated March 18, 2019; and

WHEREAS, the EAS documents state that the proposed eating or drinking establishment with entertainment and a capacity of more than 200 persons will not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the Board has determined that the proposed operation at the premises will not have a significant adverse impact on the environment; and

WHEREAS, in light of the foregoing, the Board has determined that the requested special permit, permitting the proposed eating or drinking establishment with entertainment and a capacity of more than 200 persons, is appropriate, subject to conditions set forth below.

Therefore, it is Resolved, that the Board of Standards

and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-244 and 73-03 to permit, in an R4 (C2-2) zoning district, the operation of an eating or drinking establishment with entertainment and a capacity of more than 200 persons (Use Group 12); *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 23, 2019” Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for three (3) years, expiring July 23, 2022;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-58-BZ”), shall be obtained within three (3) years, by July 23, 2022;

THAT substantial construction shall be completed in accordance with ZR § 73-70, by July 23, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 23, 2019.

2017-261-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11(Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M. for continued hearing.

MINUTES

2019-40-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for 177 East 73rd Owner LLC.; 175 East 73rd Owner LLC, lessee.

SUBJECT – Application March 1, 2019 – Variance (§72-21) to permit the enlargement of a House of Worship (UG 4) (Persian Jewish Center) contrary to ZR §24-36 (rear yard); ZR §24-11 (lot coverage); ZR §§24-50 & 23-662 (minimum base height and maximum height of buildings and setback). R8B (NYC Individual Landmarked Buildings)

PREMISES AFFECTED – 175-179 East 73rd Street, Block 1408, Lot(s) 30 and 31, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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August 16, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|---------------------------------------|---------|
| DOCKET | 627 |
| CALENDAR of September 10, 2019 | |
| Morning | 628 |
| Afternoon | 628/629 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, August 6, 2019**

Morning Calendar630

Affecting Calendar Numbers:

| | |
|--------------|--|
| 271-13-BZ | 129 Norfolk Street, Brooklyn |
| 429-29-BZ | 4801 Kings Highway, Brooklyn |
| 509-37-BZ | 202-01 Rocky Hill Road aka 202-02 47 th Avenue, Queens |
| 285-52-BZ | 30-14 34 th Avenue, Queens |
| 2017-249-A | Major Deegan Expressway and S/O Van Cortland, Bronx |
| 2018-125-A | 495 Wild Avenue, Staten Island |
| 2019-17-BZY | 30 West 39 th Street, Manhattan |
| 2019-175-A | 30 West 39 th Street, Manhattan |
| 2019-89-A | 36 West 66 th Street aka 50 West 66 th Street, Manhattan |
| 2019-94-A | 36 West 66 th Street aka 50 West 66 th Street, Manhattan |
| 2018-33-BZ | 31-41 97 th Street, Queens |
| 2018-39-BZ | 1249 East 23 rd Street, Brooklyn |
| 2016-4469-BZ | 49-23 Astoria Boulevard, Queens |
| 2018-52-BZ | 159 Boerum Street, Brooklyn |
| 2018-55-BZ | 222 Johnson Avenue, Brooklyn |
| 2018-136-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-137-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-145-BZ | 251-73 Jericho Turnpike, Queens |

Afternoon Calendar639

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2019-81-BZ | 144 East 39 th Street, Manhattan |
| 2018-193-BZ | 1389 East 22 nd Street, Brooklyn |
| 2019-20-BZ | 1933 East 14 th Street, Brooklyn |

DOCKETS

New Case Filed Up to August 6, 2019

2019-197-BZ

155 West 23rd Street, Block 00799, Lot(s) 0012, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Solidcore) contrary to ZR §22-10. C6-3X zoning district. C6-3X district.

2019-198-A

1390 Richmond Terrace, Block 00158, Lot(s) 0006, Borough of **Staten Island, Community Board: 1**. Application to permit the conversion and enlargement of an existing three-story Business Building to a three-story school (UG 3), partially within the bed of a mapped street pursuant to Section 35 of the General City Law. C2-2/R3-2 & R3A Lower Density Growth Management Area district. R3-2/C2-2 R3A district.

2019-199-A

1045 Madison Avenue, Block 1491, Lot(s) 151, Borough of **Manhattan, Community Board: 8**. Appeal of a New York City Department of Buildings challenging the validity of a building permit dated July 1, 2019. C5-1 Special Madison Avenue Preservation District. C5-1 district.

2019-200-BZ

41-19 Bell Boulevard, Block 6290, Lot(s) 0005, Borough of **Queens, Community Board: 11**. Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (OrangeTheory Fitness) located on a portion of the first floor and cellar of an existing building contrary to ZR §31-10. C2-2/R6B and C8-1 zoning districts. R6B/C2-2 and C8-1 district.

2019-201-BZ

285 Grand Street, Block 00306, Lot(s) 0022, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (WillyB CrossFit) located in the cellar of an existing two-story building contrary to ZR §31-10. C6-1G zoning district. C6-1G district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING SEPTEMBER 10, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 10, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

140-14-A

APPLICANT – Eric Palatnik, P.C., RBM NY 1016 LLC, owner.

SUBJECT – Application April 22, 2019 – Extension of time to complete construction of and obtain a Certificate of Occupancy for a five-story mixed residential and commercial building under the common law and Vested Rights under the previous C4-3 zoning. R5 zoning district. PREMISES AFFECTED – 1016 East 13th Street, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2016-4302-A thru 2016-4326-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of twenty-five (25) single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 92 to 120 Cupidity Drive and 201 to 225 Avidita Place, Block 3019, Lot(s) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and Lot(s) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, Borough of Staten Island.

COMMUNITY BOARD #1SI

2016-4355-A thru 2016-4462-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of 107 single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-465 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446,

447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-107-A thru 2017-129-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications April 13, 2017 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) Borough of Staten Island.

COMMUNITY BOARD #1SI

2019-51-A thru 2019-57-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Application March 19, 2019 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 119, 118, 117, 116, 115, 114, 113, Borough of Staten Island.

COMMUNITY BOARD #1SI

REGULAR MEETING SEPTEMBER 10, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 10, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-177-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kasim Allaham, owner.

SUBJECT – Application November 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family to be converted to a single-family home, contrary to floor area (§23-142); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2061 Ocean Parkway, Block 7109, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2019-29-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 Clinton LLC, owner; International Charter School, lessee.

SUBJECT – Application February 6, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (International Charter School) contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 30 Clinton Avenue, Block 1872, Lot(s) 44, 48, 49, Borough of Brooklyn.

COMMUNITY BOARD #2BK

2019-86-BZ

APPLICANT – Jay Goldstein, Esq., for Moti Zilber, owner.

SUBJECT – Application May 3, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio). R2 zoning district.

PREMISES AFFECTED – 2702 Avenue N, Block 7681, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2019-87-BZ

APPLICANT – Jay Goldstein, Esq., for Everstone Realty LLC c/o Joseph Rosanel, owner.

SUBJECT – Application May 6, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio). R2 zoning district.

PREMISES AFFECTED – 2624 Avenue M, Block 7662, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 6, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Scibetta.
Absent: Commissioner Sheta.

SPECIAL ORDER CALENDARS

271-13-BZ

APPLICANT – Viktoriya Midyany, owner.
SUBJECT – Application January 8, 2019 – Extension of
Time to Complete Construction of a previously approved
Special Permit (§73-622) for the enlargement of an existing
single-family home which expires on January 30, 2019. R3-
1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Block 8757,
Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Scibetta...4

Absent: Commissioner Sheta.....1

Negative:0

Adopted by the Board of Standards and Appeals, August
6, 2019.

429-29-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for 4801
Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment
(§11-412) of a previously approved variance which
permitted the operation of an Automotive Service Station
(UG 16B) with accessory uses. The amendment seeks to
change the configuration of the existing gasoline dispensing
pumps; the addition of a canopy; conversion and
enlargement of the accessory building from an accessory
lubritorium to an accessory convenience store with a drive-
thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block
7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to October
22, 2019, at 10 A.M., for adjourned hearing.

509-37-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty
Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-
413) to permit the legalization of a change of use of a
previously approved variance permitting an Automotive
Service Station (UG 16B) to an Automotive Repair Facility
(UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka
202-02 47th Avenue, Block 5561, Lot 10, Borough of
Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November
26, 2019, at 10 A.M., for continued hearing.

285-52-BZ

APPLICANT – Sheldon Lobel, P.C., for Astoria 34 LLC,
owner; Lukoil North America, lessee.

SUBJECT – Application August 30, 2018 – Extension of
Term (§11-411) of a previously approved variance which
permitted the operation of an Automotive Service Station
(UG 16B) which expired on October 21, 2017; Amendment
to permit the conversion of accessory automotive service
bays to an accessory convenience store; Waiver of the
Board's rules. R5 Zoning District.

PREMISES AFFECTED – 30-14 34th Avenue, Block 607,
Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November
26, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-249-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New
York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – An
administrative appeal challenging the Department of
Buildings' final determination as to whether the NYC
Department of Building's correctly found that the Sign is
not exempt, permitted as-of-right, or established as a legal
non-conforming use. M1-2 zoning district.

PREMISES AFFECTED – Major Deegan Expressway and
S/O Van Cortland, Block 3269, Lot(s) 70/118, Borough of
Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Scibetta...4

Absent: Commissioner Sheta.....1

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of

MINUTES

Buildings (“DOB”), acting on a sign registration application, states in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for the registration of the above-referenced arterial advertising sign. This sign was remanded to the Department for reconsideration of Arterial Registration in by the Honorable Michael D. Stallman in Index No. 100394/2013. You assert that ‘the signage was legally established as of 1979 pursuant to the then applicable Zoning Resolution Section 42-53 (now Section 42-55).’ Unfortunately, the documentation submitted in support of your assertion, an undated photo showing the back of a sign structure, is inadequate to support the registration of the sign and as such, the sign is rejected from registration. Based on the evidence provided, you have not established that the above sign is: 1) exempt from the City’s registrations; 2) allowed as-of-right; or, 3) legally established as a nonconforming use. Accordingly, this sign location will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of Outfront Media LLC (“Appellant”), alleging errors in the above determination pertaining to whether an advertising sign at the subject site is exempt from the City’s regulations, permitted as of right, or lawfully established as a non-conforming use under the Zoning Resolution; and

WHEREAS, the subject site is located in an M1-2 zoning district and includes land less than 10 feet from and within view of the Major Deegan Expressway, an arterial highway designated in Appendix H of the Zoning Resolution; and

WHEREAS, an advertising sign located at the subject site has a single sign face with a height of 19’-6”, a width of 48’-0”, and 936 square feet of surface area; and

WHEREAS, a public hearing was held on this appeal on November 8, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2019, and then to decision on August 6, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Appellant commenced this appeal on August 28, 2017; and

WHEREAS, Appellant states that the subject sign constitutes a lawful non-conforming use and should be registered as a lawful arterial-advertising sign; and

WHEREAS, Appellant states that the subject sign was established as a lawful non-conforming use as of November 1, 1979, under ZR § 42-55, as evidenced by the following:

“a copy of a letter from the Conrail Real Estate Department dated November 30, 1977, referencing approved sign application nos. 13579 and 13580 by Transportation Displays, Inc., an outdoor advertising company and corporate predecessor of [Appellant], for the display of advertising signage at the Premises” (internal definition omitted); “a copy of application no. 13579 dated July 28, 1977 and approved by Conrail on November 30, 1977, describing the signage at issue, including its placement on the Premises”; “a June 23, 1978 TDI memorandum referencing applications including those noted above”; “additional correspondence dated November 16, 1982 with respect to TDI sign licenses including those referenced above”; “a letter from AMNI America dated February 27, 1989 referencing the approved application noted above for signage ‘which has been in service since July, 1977’”; “available photographs of the Premises,” including “Google Maps photographs from 2011 through 2018; Historic Aerials photographs from 1980, 2004, 2006, 2008, 2009 and 2010; and a NY City Map photograph from 1996”; and

WHEREAS, DOB refutes that the evidence furnished by Appellant demonstrates that the subject sign was constructed prior to November 1, 1979, noting that none of the photographs submitted show the face of the subject sign and many are of such poor quality that determining the presence of any sign structure is not possible; and

WHEREAS, DOB also submits that, instead, Appellant’s evidence demonstrates the subject sign has been impermissibly reconstructed or structurally altered after 1979, contrary to ZR § 42-55; and

WHEREAS, in response, Appellant requests withdrawal of this appeal.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *permit* this appeal to be *withdrawn*.

Adopted by the Board of Standards and Appeals, August 6, 2019.

2018-125-A

APPLICANT – Cesare Giaquinto, for 495 Wild Ave, LLC, owner.

SUBJECT – Application July 30, 2018 – Proposed construction of a two-story commercial building for vehicle storage on the ground floor and accessory offices on the second floor not fronting a legally mapped street contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 495 Wild Avenue, Block 2705, Lot(s) 49, 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown, Commissioner Scibetta.4

Absent: Commissioner Sheta.1

Negative:0

MINUTES

THE RESOLUTION –

WHEREAS, the decisions of the Deputy Borough Commissioner, dated July 2, 2018, acting on Department of Buildings (“DOB”) New Building Application No. 520291693, reads in pertinent part:

GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to Section 501.3.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of a two- (2) story commercial building with frontage on Wild Avenue, an existing and improved road not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on August 6, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, on September 10, 2019, the Board reopened the record to accept a letter of no objection, issued by the New York City Department of Environmental Protection, and closed the record; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Wild Avenue, between Victory Boulevard and West Service Road, in an M3-1 zoning district, on Staten Island, and is currently vacant; and

WHEREAS, the site is located approximately 420 feet east of the intersection of Wild Avenue and the southern record line of Victory Boulevard, a mapped street; and

WHEREAS, the Plot Diagram submitted by the applicant on November 14, 2018, indicates that Wild Avenue is unmapped, but was issued a Corporation Counsel Opinion, dated November 17, 1925, as in-use at a width of 80 feet; and

WHEREAS, the applicant states that Wild Avenue is paved to a width of between 34 feet and 36 feet and that the subject site will be accessed by proposed 18-foot and 13’-9” wide curb cuts; and

WHEREAS, the applicant submits that the site will comply with all applicable provisions of the Zoning Resolution, including, but not limited to, use, bulk, height and setback; and

WHEREAS, by letter dated August 21, 2019, the New York City Department of Environmental Protection (“DEP”) states that there is a 12-inch diameter City water main and 12-inch diameter sanitary sewer in fronting the above mentioned

property in Wild Avenue; there are no existing City sewers or water mains inside the privately owned referenced lot; as per Topographical Survey submitted, dated March 15, 2016, by the applicant, Wild Avenue (Dean Avenue) is not final mapped, not adopted, Corporation Counsel Opinion November 17, 1925, as in use; the proposed sanitary and storm for the house #495 Wild Avenue will be discharged as per the certified Site Connection Proposal (“SCP”); all sanitary, storm discharge and water connections will be maintained by the owners, and will not be maintained by the City of New York; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”), proposing to increase the paved width of Wild Avenue to approximately 36 feet directly in front of the subject site and continue the sidewalk at the same width on both sides of the lot, was filed with the New York City Departments of Buildings; and

WHEREAS, the subject site is the only unimproved lot between Victory Boulevard and West Service Road; and

WHEREAS, Wild Avenue provides access to major commercial uses on the same side of Wild Avenue as the proposed commercial building; and

WHEREAS, the applicant additionally states that the proposed commercial building will not produce an undesirable change in the neighborhood; and

WHEREAS, by letter dated August 5, 2019, the Fire Department raised objections to the subject application and required architectural plans of the proposed building and layout of the first and second floors; clarification to the Schedule A, listing the building as a one- (1) story commercial building, as compared to the plans, proposing the subject two- (2) story building; clarification to the floor to ceiling height of the entry driveway and at the rear yard access point; the distance to the nearest fire hydrant be shown; the location of the proposed sprinkler Fire Department connection be shown; and, the distance to the fence line opposite the subject site be shown, given that the subject site proposes head-in parking, which may reduce the width of Wild Avenue; and

WHEREAS, in response, the applicant submitted a revised site plans containing further detail and clarification; and

WHEREAS, at hearing, the Fire Department stated that the floor plans sufficiently show the detail required, the clearance height is shown at 17 feet, the building will be fully sprinklered with the closest fire hydrant in front of the proposed building, the fencing across the street is 60 feet to the property line and there is not a concern of Fire Department obstruction to the access, given that parking will be at 90 degrees to the street line and, therefore, stated no further objection to the subject application; and

WHEREAS, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

Therefore, it is Resolved, that the decision of the Department of Buildings dated July 2, 2018, acting on Department of Buildings Application No. 520291693, is modified by the power vested in the Board by Section 36 of

MINUTES

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 drawings filed with the application marked “August 6, 2019”-One (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the proposed commercial building shall be fully sprinklered, as indicated on the Board-approved plans;

THAT the above conditions shall be noted on the certificates of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-125-A”), shall be obtained within four (4) years, by August 6, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by DOB;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 6, 2019.

2019-17-BZY

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.

SUBJECT – Application January 22, 2019 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-6 zoning district.

PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2019-175-A

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.

SUBJECT – Application June 18, 2019 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaptation of a zoning text amendment on December 20, 2018. M1-6 zoning district.

PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2019-89-A

APPLICANT – City Club of New York, for West 66th Sponsor LLC c/o Extell Development Co., owner.

SUBJECT – Application May 7, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

2019-94-A

APPLICANT – Landmark West, for West 66th Sponsor LLC c/o Paul Hastings LLP, owner.

SUBJECT – Application May 13, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7 and R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2018-33-BZ

CEQR #18-BSA-106Q

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown, Commissioner Scibetta.....4

Absent: Commissioner Sheta.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 27, 2018, acting on DOB Application No. 420663071, reads in pertinent part:

1. ZR 22-00 Non - Permitted Use Group.
Applicant proposes a building with no side

MINUTES

- yards in Zoning District R4-1 – only detached or zero lot line buildings are permitted as of right in this district;
2. ZR 23-32 Min. Lot Area or Width for Residences. This lot does not comply with minimum required area or width for detached or zero lot line buildings;
 3. ZR 23-461(a) Side Yards For Single or Two Family Residences. One side yard is required for a detached or zero lot line building in R4-1 district; none is provided; [. . .]
 5. ZR 25-22(a) Requirements Where Individual Parking Facilities Are Provided. Two parking spaces per building are required in predominantly built-up areas of this district - only one is provided; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R4-1 zoning district, the construction of a two- (2) story plus cellar two- (2) family attached residence that does not comply with the underlying zoning regulations pertaining to residential building typology, minimum lot area and lot width, side yards and accessory parking in the subject zoning district, contrary to ZR §§ 22-00, 23-32, 23-461 and 25-22(a); and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on June 25, 2019, and August 6, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that the development comply with all DOB regulations concerning construction including rodent abatement; and

WHEREAS, the subject site on the east side of 97th Street, between 32nd Avenue and Jackson Mill Road, in an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 20 feet of frontage along 97th Street, 95 feet of depth, 1,900 square feet of lot area and is currently vacant; and

WHEREAS, detached and semi-detached single- or two- (2) family residential dwellings are permitted at the subject site provided the zoning lot contains a minimum lot width of 25 feet, a minimum lot area of 2,375, one (1) side yard with a minimum width of eight (8) feet and two (2) accessory parking spaces; and

WHEREAS, the applicant proposes to construct a two- (2) family attached residence with no side yards and one (1)

parking space, contrary to ZR §§ 22-00, 23-32, 23-461 and 25-22(a) and, accordingly, seeks the subject relief; and

WHEREAS, the applicant submits that the floor area, balconies, rear yard, front yard, height and setback comply with underlying zoning requirements and the Board makes no determination herein and, as such, the Department of Buildings must ensure that the proposal complies with the underlying zoning requirements for floor area, balconies, rear yard, front yard, height and setback, including floor area at the second floor, a portion of which may be under a sloping roof; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done”; and

WHEREAS, the applicant states the subject site’s narrow lot width, small lot area, vacancy and ownership in isolation of adjoining lots are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study demonstrating that within 400 feet of the subject site (the “Study Area”), the subject site is one (1) of only three (3) sites out of a total 104 sites located within the Study Area (three (3) percent) that has a narrow lot width of 20 feet or less and is not owned or used in conjunction with an adjoining property and, further, the subject site is the only vacant property owned independently of, and, thus, cannot be developed in conjunction with, adjacent lots; and

WHEREAS, the applicant submits that a vacant, 20-foot wide zoning lot cannot accommodate a conforming residential building and, with the eight- (8) foot side yard requirement and exterior wall thickness, would result in a dwelling with approximately ten- (10) feet of usable interior width; and

WHEREAS, in light of the foregoing, the Board finds that the status of the subject site’s narrow lot width, small lot size, vacancy and history of residential use create unnecessary hardship and practical difficulty in developing the site in strict compliance with the cited provisions of the Zoning Resolution; and

WHEREAS, the applicant submits that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable two- (2) family detached or semi-detached dwelling; and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property and will not be detrimental to the public welfare and submits that, on the subject block, there are no buildings with a front wall width of less than 20 feet and, within 400 feet of the subject site and within an R4-1 zoning district, 84 single- and two- (2) family residences out of the 104 total such residences in the

1 The applicant received an objection, under ZR § 23-142, for floor area. Over the course of hearings, the proposal was revised to provide a complying floor area; thus, the applicant no longer required a waiver of that section.

MINUTES

Study Area (81 percent) have widths of 20 feet or more; and

WHEREAS, over the course of hearings, the Board raised concern regarding the floor area and perimeter wall height of the proposed building and requested that the applicant reduce them to comply with the underlying R4-1 zoning district regulations; and

WHEREAS, in response, the applicant revised the proposal to provide complying floor area and reduced the height of the building to 25 feet to comply with underlying zoning regulations; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant submits that between 1975 and 1980, the City of New York acquired the subject site and adjoining tax lot 49, then in common ownership, and subsequently sold them to separate property owners; and

WHEREAS, accordingly, the Board finds that the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents, and the Board finds, that the subject proposal is the minimum variance necessary to afford relief, in satisfaction of ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made and that the applicant has substantiated a basis to warrant exercise of discretion; 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. 18BSA106Q, dated July 30, 2018.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, within an R4-1 zoning district, the construction of a two- (2) story plus cellar two- (2) family attached residence that does not comply with the underlying zoning regulations pertaining to residential building typology, minimum lot area and lot width, side yards and accessory parking in the subject zoning district, contrary to ZR §§ 22-00, 23-32, 23-461 and 25-22(a); *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 11, 2019”– Thirteen (13) sheets; and *on further condition*:

THAT the following shall be the use and bulk parameters of the site: a two- (2) story, two- (2) family attached dwelling with a maximum building width of 20 feet, no side yards and one (1) parking space, as illustrated on BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-33-BZ”) shall be obtained within four (4) years, by August 6, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 6, 2019.

2018-39-BZ

CEQR #18-BSA-111K

APPLICANT – Law Office of Lyra J. Altman, for Jackie Cohen-Arazi, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1249 East 23rd Street, Block 7641, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown, Commissioner Scibetta.....4

Absent: Commissioner Sheta.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 15, 2018, acting on DOB Application No. 321191170, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
 2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%;
 3. Plans are contrary to ZR 23-461(a) in that the proposed side yards are less than the required 5’-0” and 8’-0”;
 4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;
- and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, enlargement of a single-family detached dwelling that does not comply with the zoning

MINUTES

requirements for floor area ratio (“FAR”), open space ratio (“OSR”), side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on June 25, 2019, and August 6, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of three (3) form letters in support of this application; and

WHEREAS, the subject site is located on the east side of East 23rd Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage along East 23rd Street, 100 feet of depth, 3,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar and attic single-family dwelling with an FAR of 0.58 (1,753 square feet of floor area), an OSR of 1.17 (2,056 square feet of open space), two (2) side yards with widths of 8’-7” and 1’-4” and a rear yard with a depth of 26’-2” and 29’-4” at the third story; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the

effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building’s non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to both vertically and horizontally enlarge the building, resulting in a three- (3) story plus cellar single-family dwelling with an FAR of 1.0 (2,999 square feet of floor area), an OSR of 0.58 (1,745 square feet of open space), two (2) side yards with widths of 6’-11” and 1’-4” and a rear yard with a depth of 20 feet at the

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

first and second story and 29 feet at the third story; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 944 square feet to 1,211 square feet, the second floor from 809 square feet to 1,255 square feet, and the attic from 0 square feet to 533 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted (1,500 square feet), a minimum OSR of 1.5 (2,250 square feet of open space based on a complying 0.5 FAR), two (2) side yards with minimum widths of five (5) feet and ten (10) feet of total side yard², and a rear yard with a depth of 30 feet are required pursuant to ZR §§ 23-141, 23-32, 23-48, 23-461 and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying northern side yard and the Board notes that, pursuant to a 1940 Department of Finance tax photo showing the subject site and provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant provided an analysis of single- or two- (2) family dwellings located within 400 feet of the subject premises and within an R2 zoning district (the "Study Area") concluding that, of the 131 qualifying residences, 117 residences (89 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.12; and

WHEREAS, with regards to open space ratio, the applicant demonstrated that, within the Study Area, 123 residences (94 percent) have an OSR less than 1.5, ranging from 1.48 to 0.38; and

WHEREAS, with regards to the rear yard depth, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that 25 dwellings located on interior lots (66 percent) have a rear yard with a depth of less than 30 feet, with rear yard depths ranging from 28 feet to 11 feet, including the dwellings adjacent to the subject site, which have rear yards with depths of 22'-11" and 18'-2"; and

WHEREAS, over the course of hearings, the Board raised concern that the proposed building should provide a greater rear yard depth above the first story; and

WHEREAS, in response, the applicant provided a survey demonstrating that the dwellings adjacent to the subject site have rear yards with depths of 22'-11" and 18'-2" and, in this instance, a rear yard of 20' at all levels is contextually appropriate; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use

or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA111K, dated March 19, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a single-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received "July 18, 2019"-Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum FAR of 1.0 (2,999 square feet of floor area), a maximum OSR of 0.58 (1,745 square feet of open space), two (2) side yards with minimum widths of 6'-11" and 1'-4" and a rear yard with a minimum depth of 20 feet at the first and second story and 29 feet at the third story, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70, by August 6, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-39-BZ"), shall be obtained within four (4) years, by August 6, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other

² Per ZR §§ 23-32 and 23-48, the subject site has an undersized lot width of 30' and, as such, the required side yards may be reduced to five (5) feet, with ten (10) feet of total side yards.

MINUTES

applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 6, 2019.

2016-4469-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Winston Network, Inc., owner.

SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta...4

Absent: Commissioner Sheta.....1

Negative:0

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for decision, hearing closed.

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta...4

Absent: Commissioner Sheta.....1

Negative:0

ACTION OF THE BOARD – Laid over to August 13, 2019, at 10 A.M., for decision, hearing closed.

2018-136-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.

SUBJECT – Application August 17, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. C8-1/R2A zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108, 80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

2018-137-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.

SUBJECT – Application August 17, 2018 – Special Permit (§73-19) to permit the operation of a daycare (*Children of America*) contrary to ZR §32-10. C8-1 zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108,80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

2018-145-BZ

APPLICANT – Akerman, LLP, for Jericho Holdings LLC, owner; 251 Jericho Turnpike Fitness Group, LLC, lessee.

SUBJECT – Application September 7, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) to be located on portions of the first and second floors of a new building contrary to ZR §32-10. C8-1 Zoning District.

PREMISES AFFECTED – 251-73 Jericho Turnpike, Block 8668, Lot 108, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 6, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Scibetta.
Absent: Commissioner Sheta.

ZONING CALENDAR

2019-81-BZ

APPLICANT – Akerman, LLP, for English-Speaking Union of the United States, owner.

SUBJECT – Application April 26, 2019 – Re-instatement (§11-411) of a previously approved variance which permitted office use on the third floor of an existing three-story building which expired on April 8, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Board’s Rules. R6B zoning district.

PREMISES AFFECTED – 144 East 39th Street, Block 894, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown, Commissioner Scibetta4

Absent: Commissioner Sheta1

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and reinstatement of a variance, pursuant to ZR § 11-411, previously granted by the Board, which expired on April 8, 2007; and

WHEREAS, a public hearing was held on this application on August 6, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of the application; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application and one (1) form letter in opposition to this application, citing concerns regarding traffic and congestion; and

WHEREAS, the subject site is located on the south side of East 39th Street, between Lexington Avenue and Third Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along East 39th Street, 99 feet of depth, 2,469 square feet of lot area and is occupied by an existing three-(3) story plus cellar office (Use Group (“UG”) 6) building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1955, when, under BSA Cal. No. 933-54-BZ, the Board granted a variance to permit the extension of business use to the adjacent building, located on tax lot 55, to permit openings between the subject site and adjacent building on lot 55, and to permit a rear extension of the building on lot 55 and reduction of the rear yard, all as shown on plans filed with the application, for a term of 10 years, to expire on June 7, 1965, on condition that the building not be increased in height or area; in all other respects comply with all laws, rules and regulations applicable thereto; and, all permits be obtained, all work completed and a certificate of occupancy be obtained within one (1) year, by June 7, 1956; and

WHEREAS, on January 19, 1960, under BSA Cal. No. 933-54-BZ, the Board amended the variance to permit a change in occupancy of the third floor of the subject site, from two (2) apartments to office space, and the upper three (3) floors of the adjacent building on tax lot 55, from six (6) apartments to offices, for a term of 20 years, to expire on January 19, 1960, on condition that the work be done in accordance with plans filed with the application; all laws, rules and regulations applicable be complied with; and, all permits, including a certificate of occupancy, be obtained and all work completed within one (1) year, by January 19, 1961; and

WHEREAS, on January 19, 1960, under BSA Cal. No. 347-59-A, the Board granted an appeal and modified the decision of the Borough Superintendent with respect to Class 3 construction, stairways and live load, on condition that the work be done in accordance with plans filed under BSA Cal, No, 933-54-BZ, dated November 9, 1959; the floors be made adequate and approved by the Department of Buildings, to support a 50-pound live load with an additional allowance of 12 pounds for partitions; the combined buildings be equipped throughout with a one- (1) source sprinkler system; and, all laws, rules and regulations applicable be complied with and a certificate of occupancy be obtained; and

WHEREAS, on November 14, 1962, under BSA Cal. No. 347-59-A, the Board amended the 1960 resolution by adding that the combined buildings be equipped throughout with a one- (1) source sprinkler system as previously required, except that the sprinklers may be omitted from the second floor of the subject site, 144 East 39th Street, substantially as shown on revised drawings, on condition that the area from which sprinklers are omitted be adequately protected by carbon tetrachloride globules held in place with fusible links; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on April 8, 1997, under BSA Cal. No. 28-96-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, reinstated the expired variance, issued June 7, 1955, under BSA Cal. No. 933-54-BZ, as amended through January 19, 1960, which permitted office uses on the third floor of the existing three- (3) story building, legalized a greenhouse structure at the rear of the third floor level of the premises,

MINUTES

which increased the floor area of the non-conforming office use by approximately 200 feet, and amended the variance to reflect a reduction in the size of the zoning lot to eliminate the adjacent building at 146 East 39th Street, tax lot 55, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the variance be limited to a term of ten (10) years, to expire on April 8, 2007; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a new certificate of occupancy be obtained within one (1) year, by April 8, 1998; and

WHEREAS, on December 18, 2001, under BSA Cal. No. 28-96-BZ, the Board amended the variance to legalize approximately 117 square feet then used as a greenhouse located at the rear of the third floor, on condition that the premises be maintained in substantial compliance with the existing and proposed plans submitted with the application; the premises be maintained in compliance with all applicable provisions of the Administrative Code with respect to fire safety and prevention; the premises remain graffiti free at all times; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by December 18, 2005; and

WHEREAS, the prior term having expired, the applicant now seeks a reinstatement of the variance, first issued in 1955, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*1 was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood; and

WHEREAS, in addition, because this application was filed more than ten (10) years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(4)(i), to permit the filing of this

application; and

WHEREAS, § 1-07.3(b)(4)(i) of the Board's Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term, that substantial prejudice would result without such a waiver and that the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, accordingly, the applicant states that the site has operated continuously since the expiration of the term and provided evidence including directory listings for the subject third floor office, photographs of the subject site from the street, Department of Finance assessments and contracts and plans related to interior renovations at the subject site to continuously cover the entire period from 2007 through the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the § 1-07.3(b)(4)(i) of the Board's Rules represents that, absent the subject waiver to permit filing of the application, it will be required that the third floor of the building be converted to a conforming use and would prevent the tenant from providing valuable educational services; and

WHEREAS, the applicant further states that the office use permitted by the Board's grant does not impair the appropriate use and development of adjacent properties because it is consistent with the historical use of the site and commercial uses in the nearby surrounding area; and

WHEREAS, the applicant also seeks to legalize interior alterations to the site, including the installation of an elevator and relocation of partitions and represents that there have been no changes to the approved floor area of the existing building; and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing building and, instead, proposes to legalize minor renovations to the existing building as is permitted under ZR § 11-412; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules and reinstatement of the variance are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(3)(i) of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, *reinstates* and *amends* a previously-granted variance, issued June 7, 1955, under BSA Cal. No. 933-54-BZ, as amended through December 18, 2001, under BSA Cal. No. 28-96-BZ, to permit, on a site located within an R8B zoning district, the third floor of the subject site to be used as office (UG 6), *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 16, 2019"- Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on August 6, 2029;

THAT the premises be maintained in compliance with all applicable provisions of the Administrative Code with

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

respect to fire safety and prevention; the premises remain graffiti free at all times;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 28-96-BZ, not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-81-BZ”) shall be obtained within one (1) year, by August 6, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 6, 2019.

2018-193-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Brodt and Rina Brodt, owners.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1389 East 22nd Street, Block 7658, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

2019-20-BZ

APPLICANT – Law Office of Lyra J. Altman, for Albert Shayek and Sophia Shayek, owners.

SUBJECT – Application January 25, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47). R5 zoning district.

PREMISES AFFECTED – 1933 East 14th Street, Block 7293, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Loreal Monroe, *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

| | |
|---------------------------------------|---------|
| DOCKET | 635 |
| CALENDAR of September 17, 2019 | |
| Morning | 636 |
| Afternoon | 637/638 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, August 13, 2019**

Morning Calendar639

Affecting Calendar Numbers:

| | |
|---------------------------|---|
| 156-73-BZ | 1975 Eastchester Road, Bronx |
| 982-83-BZ | 191-20 Northern Boulevard, Queens |
| 157-06-BZ | 28-56 Steinway Street, Queens |
| 163-14-A thru 165-14-A | 502, 504 and 506 Canal Street, Manhattan |
| 186-14-BZ | 51-63 Bond Street and 252-270 Schermerhorn Street, Brooklyn |
| 138-87-BZ | 218-36 Hillside Avenue, Queens |
| 2018-47-A | 45 Case Avenue, Staten Island |
| 2017-288-BZ | 17-10 Whitestone Expressway, Queens |
| 2018-52-BZ | 159 Boerum Street, Brooklyn |
| 2018-55-BZ | 222 Johnson Avenue, Brooklyn |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 2018-25-BZ | 109 Wortman Avenue, Brooklyn |
| 2018-56-BZ | 83 Coleridge Street, Brooklyn |
| 2018-95-BZ | 120 Avenue M, Brooklyn |
| 2018-141-BZ | 110-37 68 th Drive, Queens |
| 2018-154-BZ | 966 East 24 th Street, Brooklyn |
| 2019-15-BZ | 79-40 Cooper Avenue, Queens |

Afternoon Calendar660

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2017-324-BZ | 80 Fifth Avenue, Manhattan |
| 2018-19-BZ | 119 West 23 rd Street, Manhattan |
| 2019-10-BZ | 205 West 58 th Street, aka 920 7 th Avenue, Manhattan |
| 2019-7-BZ | 3341 Country Club Road, Bronx |
| 2019-34-BZ | 25-27 East 104 th Street, Manhattan |
| 2019-39-BZ | 2311 East 4 th Street, Brooklyn |
| 2019-49-BZ | 221 North 14 th Street, Brooklyn |
| 2019-50-BZ | 116 Duane Street, Manhattan |
| 2019-61-BZ | 1370 East 24 th Street, Brooklyn |

DOCKETS

New Case Filed Up to August 13, 2019

2019-202-BZ

2218 East 3 Street, Block 7129, Lot(s) 0031, Borough of **Brooklyn, Community Board: 15**.
Special Permit (§73-622) to permit the enlargement of a single-family home contrary to
underlying bulk requirements. R4 Special Ocean Parkway District. R4 district.

2019-203-BZ

144-43 Farmers Boulevard, Block 13314, Lot(s) 0001, Borough of **Queens, Community
Board: 13**. Special Permit (§73-30) to allow a non-accessory radio tower (Verizon) on the
rooftop of an existing building. R3-2 zoning district. R3-2 district.

**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings,
Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings,
Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building,
The Bronx; H.D.-Health Department; F.D.-Fire Department.**

CALENDAR

REGULAR MEETING SEPTEMBER 17, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 17, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDARS

227-09-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero/Chris Realty Holding Corp., owner.

SUBJECT – Application February 4, 2019 – Extension of Time to complete construction of a previously approved Variance (§72-21) permitting the construction of a two-story commercial building, contrary to use regulations (§22-10) which expired on August 16, 2015; Waiver of the Board's Rules. C1-4 Zoning District.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, formerly 100-16 Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

216-13-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application July 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (Boardwalk Avenue), contrary to General City law Section 35. Companion Appeal application was granted pursuant to BSA Calendar Number 217-13-A which expired on June 24, 2018; Waiver of the Board's Rules. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6354/6397, Lot(s) 40, 7, 9, 12, 19 (Ten 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDARS

250-14-AII, 253-14-AII thru 257-14-AII

APPLICANT – Sheldon Lobel, P.C., for Villanova Heights, Inc., owner.

SUBJECT – Application April 22, 2019 – Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and Vested Rights. (R1-2) zoning district.

PREMISES AFFECTED – 5041, 5300, 5310, Grosvenor Avenue, 5041, 5030, 5040 Goodridge Avenue, Block 5831, Lot 50, Block 5839, Lot (s) 4025, 4018, 3940, 3630, 3635, Borough of Bronx.

COMMUNITY BOARD #8BZ

2018-129-A

APPLICANT – Philip L. Rampulla, for Donna Marie Russo, owner.

SUBJECT – Application August 3, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District (Special Area “M”). PREMISES AFFECTED – 484F Sharrotts Road, Block 7328, Lot 323, Borough of Staten Island.

COMMUNITY BOARD #3SI

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, NA-1 zoning district.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

REGULAR MEETING SEPTEMBER 17, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 17, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-27-BZ

APPLICANT – Eric Palatnik, P.C., for Nathalie Vilinsky, owner.

SUBJECT – Application February 21, 2018 – Special Permit (§73-622) to legalize previous enlargement and further enlarge an existing single-family home contrary to ZR §23-142 (floor area and lot coverage) and ZR §23-47 (rear yard). R3-1 zoning district.

PREMISES AFFECTED – 16 Dover street, Block 8729, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

2018-191-BZ

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for postponed hearing.

2019-6-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eastern Prelacy of the Armenian Apostolic Church, owner.
SUBJECT – Application January 9, 2019 – Variance (§72-21) to permit the enlargement of an existing house of worship (*Eastern Prelacy of the Armenian Apostolic Church*) contrary to ZR §24-11 (lot coverage and floor area ratio); ZR §§24-33 & 24-36 (permitted rear yard obstruction within a 30' required yard). R8 zoning district.

PREMISES AFFECTED – 138 East 39th Street, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

2019-23-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Karass Mulberry 290 LLC, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Martial Arts Family Studio) on portions of the cellar and first floor of an existing 11 story and cellar mixed use residential and commercial building contrary to ZR §32-10.

PREMISES AFFECTED – 290 Mulberry Street aka 41 East Houston Street, Block 590, Lot(s) 19 & 20, Borough of Manhattan.

COMMUNITY BOARD #2M

2019-157-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, Block 1436, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

2019-158-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, Block 1845, Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 13, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

Absent: Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

156-73-BZ

APPLICANT – The Design Alliance/Gary Maranga, for Albert Einstein College of Medicine, owner.

SUBJECT – Application June 28, 2018 – Extension of Term of a previously approved variance made pursuant to Section 60(3) of the Multiple Dwelling Law, permitting the use of Transient parking for the unused and surplus tenants' space in the required accessory garage of a multiple dwelling which expires on June 26, 2013. R6 and R4 zoning districts. PREMISES AFFECTED – 1975 Eastchester Road, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 27, 2018, acting on Department of Buildings (“DOB”) Application No. 220623975, reads in pertinent part:

Parking is non-compliant with the maximum parking spaces for permitted community facilities.

Provide BSA approved document substantiating the legal use of non-compliance; and

WHEREAS, this is an application for an extension of the term for a previously granted variance for a transient parking garage, which expired on June 26, 2018; and

WHEREAS, a public hearing was held on this application on March 26, 2019, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2019, and then to decision on that same date; and

WHEREAS, the subject site is located on the northwest corner of Eastchester Road and Morris Park Avenue, within an R6 zoning district, in the Bronx; and

WHEREAS, the site has 240,000 square feet of lot area and is occupied by three (3) 27-story residential buildings; and

WHEREAS, the accessory parking garage consists of three (3) levels which are occupied by a total of 691 accessory parking spaces, including 113 transient parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 26, 1973, when, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit unused and surplus parking spaces to be used for transient parking for a term of 15 years, to expire on June 26, 1988, on condition that the building conform to plans filed with the application; the transient parking be limited to the unused spaces only; the tenants of the apartment house may recapture any of the spaces devoted to transient parking on 30 days’ notice to the owner, in accordance with Section 60(1)(b) of the Multiple Dwelling Law; all laws, rules and regulations applicable be complied with; and, an amended certificate of occupancy be obtained for the garage portion of the building; and

WHEREAS, on May 15, 1984, under the subject calendar number, the Board amended the resolution to permit on the same zoning lot the erection of a one- (1) story athletic facility building, substantially as shown on revised plans of proposed conditions, on condition that substantial construction be completed within one (1) year, by May 15, 1985, and other than as amended the resolution be complied with in all respects; and

WHEREAS, on December 13, 1988, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on June 26, 1998, on condition that there be no more than 691 transient parking spaces; the accessory garage conform to the plans filed with the application; the residents of the multiple dwelling may recapture any of the spaces devoted to transient parking on 30 days’ notice to the owner or operator of the garage; all cars parked in the garage facility be private non-commercial passenger type motor vehicles; all rate signs be posted immediately inside the entrance doors of the garage; all applicable laws, rules and regulations be complied with; a new certificate of occupancy be obtained for the garage portion of the building within six (6) months, by June 13, 1989; and, the conditions appear on the certificate of occupancy; and

WHEREAS, on December 22, 1998, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on June 26, 2008, on condition that signs be maintained informing residential tenants of the complex that they may recapture a parking space upon request; the premises be maintained free of debris and graffiti and in substantial compliance with the plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by December 18, 1999; and

WHEREAS, on December 7, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten (10) years, to expire on June 26, 2018, on condition that the use and operation of the site substantially conform to the previously approved plans and all work substantially conform to plans filed with the application; all residential leases indicate that the spaces devoted to transient

MINUTES

parking can be recaptured by residential tenants on 30 days' notice to the owner; a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall; the conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; the layout of the parking lot be as approved by DOB; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board noted that there are two (2) points of entry to the garage and requested evidence demonstrating compliance with the condition regarding maintenance of the rate and recapture signs at each entrance, as well as the condition requiring the recapture provision in the residential lease rider; and

WHEREAS, in response, the applicant provided photographs demonstrating the signs posted at both garage locations and provided a sample lease rider, indicating the residential tenants' recapture rights, in satisfaction of the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution having been adopted on June 26, 1973, as amended through December 7, 2010, so that, as amended, this portion of the resolution shall read: "to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on June 26, 2028; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received July 19, 2019'-Six (6) sheets; and *on further condition*:

THAT this term will expire on June 26, 2028;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner, stating: "Pursuant to the NYC Multiple Dwelling Law Section 60(1)(b), upon 30 days' notice to the garage operator, as a resident of this building you may recapture a parking space devoted to non-resident parking. The charge for the use of a recaptured space will be determined by the garage operator but may not exceed the maximum permitted by law. You may request a parking space upon a 30 day notice to the garage operator";

THAT signs providing the same information about tenant recapture rights be located in conspicuous places within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 156-73-BZ") be obtained within one (1) year, by August 13, 2020;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 13, 2019.

982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barone Properties, Inc., owner.

SUBJECT – Application July 7, 2016 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance and extension of term for the continued operation of retail and office use (UG 6) which expired on June 1, 2014; Amendment of the configuration of accessory parking lot. Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, Block 5512, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, extension to the term of a variance, previously granted by the Board, which expired on March 6, 2019, extension of time to obtain a certificate of occupancy, which expired on June 1, 2014, and an amendment to reflect a change in the size of the lot accommodating accessory off-street parking; and

WHEREAS, a public hearing was held on this application on June 25, 2019, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends approval of the application; and

WHEREAS, the Board was in receipt of one (1) letter from a nearby civic association within whose boundary lines the subject site is located, stating no objection to the subject application but raising a concern over the presence of

MINUTES

garbage bags in front of the subject site; and

WHEREAS, the subject site is located on the southwest corner of Northern Boulevard and 192nd Street, within an R3-2 zoning district, in Queens; and

WHEREAS, the site has approximately 262 feet of frontage along Northern Boulevard, 100 feet of frontage along 192nd Street, and is occupied by an existing two- (2) story commercial building containing stores and offices; and

WHEREAS, the Board has exercised jurisdiction over the subject site, then comprised of tax lots 27, 55 and 56, since July 23, 1946, when, under BSA Cal. No. 322-46-BZ, the Board granted a variance, for a term of ten (10) years, to expire on July 23, 1956, to permit the building proposed as a showroom and accessory sales of motor vehicles also to be used for the servicing of cars, on condition that there be no repair work done on the premises; only such adjustments be made as can be done with hand tools; the building be erected substantially as indicated on revised plans submitted with the application, except there be no entrance from 192nd Street; the entire area along 192nd Street and Northern Boulevard, as well as the area to the west, be landscaped where not occupied by the building or by entrances; there be no entrance to the portion of the plot toward the west; the permitted area of the building may be calculated as occupying a portion of the corner under Section 13b; a rear yard for a width of ten (10) feet, as shown, be provided and be concrete-paved; along the rear lot line there be erected a masonry wall for the full width of the plot and not less than six (6) feet in height; such wall may be erected four (4) feet in height with a two- (2) foot ornamental steel fence above; proper curbing be maintained around all planting; entrances be restricted to two (2) from Northern Boulevard to the building each having a width not over 25 feet; there may be one (1) gasoline pump installed inside the premises and two (2) 550-gallon tanks installed outside the building in the location shown for servicing cars dealt in within the building only; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; complete working plans showing construction, design, arrangement and planting be filed for approval by the Board before same are filed with the Borough Superintendent; and, all permits required and all work be completed within one (1) year, by July 23, 1947; and

WHEREAS, on February 18, 1947, under BSA Cal. No. 322-46-BZ, the Board approved plans as in substantial compliance with the July 23, 1946 resolution, in so far as the plans include the layout and elevations and other requirements as covered by the Board's resolution, on further condition that any signs erected be permanent signs attached to the face of the building facing Northern Boulevard, excluding all temporary signs and roof signs; and

WHEREAS, on December 9, 1947, under BSA Cal. No. 322-46-BZ, the Board further amended the resolution to extend the time to complete the work on condition that, in view of the statement by the applicant that all permits were obtained and the work substantially completed, all work be completed within three (3) months, by March 9, 1948; and

WHEREAS, on June 8, 1948, under BSA Cal. No. 322-

46-BZ, the Board further amended the resolution to permit an additional door on the Northern Boulevard front into the showroom toward the east, as shown on revised plans filed with the application, on condition that in all other respects the requirements of the resolution be complied with; and, all permits required be obtained and all work completed within three (3) months, by September 8, 1948; and

WHEREAS, on January 29, 1957, under BSA Cal. No. 322-46-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on January 29, 1967, on condition that other than as amended the resolution be complied with in all respects; and, all permits be obtained, all work completed and a new certificate of occupancy be obtained within six (6) months, by July 29, 1957; and

WHEREAS, on June 27, 1967, under BSA Cal. No. 1167-66-BZ, the Board, pursuant to ZR §§ 11-411 and 11-412, granted a variance to permit the erection of a one- (1) story enlargement to an existing automotive establishment, previously before the Board, for a term of ten (10) years, to expire on June 27, 1977, on condition that all work substantially conform to plans filed with the application; the premises of block 5513, tax lot 12, under the same ownership, be subdivided as shown on plans filed with the application for the parking of cars awaiting service or that have been serviced and for the sale of used cars; no cars associated with the business be parked on the adjacent streets; all laws, rules and regulations applicable be complied with; and, all work be substantially completed within one (1) year, by June 27, 1967; and

WHEREAS, on June 18, 1968, under BSA Cal. No. 1167-66-BZ, the Board amended the resolution adopted on June 27, 1967, to permit an amendment to the drawings and extended the time by which to complete construction, on condition that the premises substantially conform to plans of proposed conditions filed with the application; all work be substantially completed within one (1) year, by June 27, 1969; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 6, 1970, under BSA Cal. No. 1167-66-BZ, the Board waived its Rules of Procedure and further amended the resolution to extend the time to complete construction on condition that substantial construction be completed within one (1) year, by October 6, 1971; and

WHEREAS, on October 6, 1970, under BSA Cal. No. 322-46-BZ, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire on January 29, 1977, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on January 13, 1976, under BSA Cal. No. 1167-66-BZ, the Board further amended the resolution on condition that the building substantially conform to revised plans of proposed conditions, all work be completed within one (1) year, by January 13, 1977, and other than as amended the resolution be complied with in all respects; and

WHEREAS, on May 17, 1977, under BSA Cal. No. 1167-66-BZ, the Board waived its Rules of Procedure and

MINUTES

further amended the resolution, including that portion previously permitted under BSA Cal. No. 322-46-BZ, to extend the term for ten (10) years, to expire on May 17, 1987, on condition that all work be completed and a certificate of occupancy be obtained within one (1) year, by May 17, 1978, and other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 20, 1978, under BSA Cal. No. 1167-66-BZ, the Board further amended the resolution to extend the time to complete the work on condition that substantial construction be completed within one (1) year, by June 20, 1979; and

WHEREAS, on March 6, 1984, under the subject calendar number, the Board, pursuant to ZR § 11-413, permitted a change in use of an existing one- (1) story plus mezzanine structure from an automobile sales and service establishment into retail stores or offices on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the grant be for a term of 15 years, to expire on March 6, 1999; the owner comply with conditions set forth in the conditional negative declaration; 50 parking spaces be provided on tax lot 12 and signs on tax lot 12 and the subject site clearly indicate the availability of parking in that location; all signs on the premises comply with C1 district regulations; a certificate of occupancy be obtained for tax lot 12 as an accessory parking lot; the curb cuts on Northern Boulevard be eliminated where not needed for approved loading or unloading within the building; the use and occupancy not include the following: amusement arcade, fast-food restaurant, discotheque, billiard parlor, pet shop, off-track betting (“OTB”) parlor, drug rehabilitation center; the use and occupancy not include any all-night operations; upon the existing lawn area on 192nd Street be maintained; planters and street trees be installed as shown on plans and maintained and replaced when necessary; upon the issuance of a new certificate of occupancy the resolution supersede the prior Board cases; the conditions appear on the certificate of occupancy; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within four (4) years, by March 6, 1990; and

WHEREAS, on December 7, 1999, under the subject calendar number, the Board amended the March 1984 resolution to extend the term for ten (10) years, to expire on March 6, 2009, on condition that no trucks be allowed in the off-site parking lot; the fencing and screening of the parking lot be maintained; the street trees and landscaping be in accordance with the BSA-approved plans; the use and occupancy not include the following: amusement arcade, fast-food restaurant, billiard parlor, pet shop, OTB parlor or drug rehabilitation center; the use and occupancy not include any all-night operations; the conditions appear on the certificate of occupancy; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by December 7, 2000; and

WHEREAS, on May 25, 2004, under the subject

calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit changes to the previously approved plans which include the reapportionment of the tenants’ floor space within the building, the construction of demising walls, which increase the number of stores from three (3) to four (4), the relabeling from mezzanine to second floor on the plans and the addition of an exterior canopy fronting Northern Boulevard, and to extend the time to obtain a certificate of occupancy for two (2) years, to expire on May 25, 2006, on condition that the premises be developed and maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; no trucks be allowed to park on the area of the 50 off-street parking spaces intended for customers; the parking lot be locked at night; the dry wells be maintained on a regular basis to prevent flooding; the debris behind the building adjacent to the homes be removed; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions appear on the new certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of any plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on July 19, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten (10) years, to expire on March 6, 2019, to grant an extension of time to obtain a certificate of occupancy for one (1) year, to expire on July 19, 2012, and to permit site modifications on condition that all work and the site layout substantially confirm to plans filed with the application; deliveries and garbage pickup only occur during business hours, Monday through Friday, from 8:00 a.m. to 5:00 p.m.; the easternmost curb cut on Northern Boulevard be removed and the curb restored in accordance with the BSA-approved plans; landscaping and fencing be provided along 192nd Street in accordance with the BSA-approved plans; the use and occupancy of the site not include physical culture establishments; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, on June 11, 2013, under the subject calendar number, the Board further amended the resolution to extend the time to obtain a certificate of occupancy for one (1) year, to expire on June 11, 2014, on condition that all use and

MINUTES

operations substantially conform to plans filed with the application; deliveries and garbage pickup only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday; signage comply with C1 district regulations; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by June 11, 2014; all conditions from prior resolutions not specifically waived by the Board remain in effect; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the grant and the time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the term and the time to obtain a certificate of occupancy, the applicant requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant additionally seeks an amendment to reflect a change in the dimensions of tax lot 12, the tax lot satisfying the subject site's accessory off-street parking; and

WHEREAS, at hearing and in light of testimony, the Board raised concerns regarding compliance with the condition regarding the storage and removal of garbage, as well as the presence of barbed wire in the parking lot area; and

WHEREAS, in response, the applicant agreed to conditions regarding the removal of garbage from the subject site by a professional carting company, as well as removal of the barbed wire; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension of term, one (1) year extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* §§ 1-07.3(b)(2) and 1-07.3(d)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated March 6, 1984, as amended through June 11, 2013, so that as further amended this portion of the resolution reads: "to grant a ten (10) year extension of term, to expire on March 6, 2029, and one (1) year extension of time to obtain a certificate of occupancy, to expire on August 13, 2020, *on condition* that all work shall substantially conform to drawings, filed with this application and marked Received "July 26, 2019"-Three (3) sheets; and *on further condition*:

THAT the term of the grant shall expire March 6, 2029;

THAT all trash must be stored in dumpsters in the rear of the site and shall be removed by a professional carting service, not by the New York City Department of Sanitation;

THAT there shall be no trash cans or garbage bags placed on the sidewalk or streets;

THAT barbed wire shall be removed immediately and

the site shall be maintained free of barbed wire;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 982-83-BZ") shall be obtained by August 13, 2020;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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, August 13, 2019.

157-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 2856 Astoria LLC, owner; TSI Astoria LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) on the first and second floor of a three-story commercial building which expired on February 27, 2017; Waiver of the Rules. C4-2A and C2-2/R6 zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, Block 662, Block 41, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of the term of a special permit, previously granted pursuant to ZR § 73-36, which expired on February 27, 2017; and

WHEREAS, a public hearing was held on this application on June 11, 2019, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2019, and then to decision on that same date; and

WHEREAS, on October 3, 2019, the Board reopened and closed the record to accept plans reflecting current zoning district boundaries at the subject site; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and

MINUTES

surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application on the following conditions: all fire prevention (sprinkler) systems be fully functional with Department of Buildings (“DOB”) approvals and permits in place; the applicant provide BSA with a timetable by which outstanding violations will be resolved and the certificate of occupancy issued; the applicant show proof of a current public assembly permit; if there are noise or operational complaints in the future from neighboring businesses or residences, the physical culture establishment (“PCE”) management address and resolve them expeditiously; and, the special permit be limited to a term of five (5) years to monitor the resolution of building violations and issuance of required permits; and

WHEREAS, the subject site is bound by Steinway Street to the east, 30th Avenue to the south, 38th Street to the west, within a C4-2A zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along each Steinway Street and 38th Street, 190 feet of frontage along 30th Avenue, 19,042 square feet of lot area and is occupied by an existing three- (3) story commercial building; and

WHEREAS, the subject PCE is located within portions of the first floor (937 square feet of floor area), second floor (15,616 square feet of floor area) and third floor (14,123 square feet of floor area) of the subject premises; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2004, when, under BSA Cal. No. 265-03-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit, on a site then partially within a R6 (C2-2) zoning district and partially within a C4-2A zoning district, the operation of a PCE, operated as “New York Sports Club,” on the second and third floors of the subject building on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the term of the special permit be limited to ten (10) years, to expire on January 13, 2014; a minimum four (4) foot wide path of travel to all exits be maintained on the floors and kept free of any equipment or obstructions at all times; any and all massages be performed by New York State licensed massage therapists; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all signage comply with the underlying signage regulations; the hours of operation be limited to Monday through Thursday, 6:00 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions appear on the certificate of occupancy; the applicant comply with all provisions of Local Law 58/87; substantial construction be completed in accordance with Z.R. § 73-70, by January 13, 2008; the approval be limited to the relief granted by the Board in response to the specifically cited and filed Department of Buildings objection only; the approved plans be considered approved

only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on February 27, 2007, under the subject calendar number, the Board granted a new special permit to legalize the enlargement of a PCE, previously before the Board, on the first and second floor of the existing building, resulting in an increase in PCE floor area from 18,005 square feet to 30,676 square feet, on condition that all work substantially conform to plans filed with the application; the term of the grant expire on February 27, 2017; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the hours of operation be limited to: Monday through Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and, Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; massages only be performed by New York State licensed massage therapists; the conditions appear on the certificate of occupancy; all signage be as approved by DOB; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) of the Board’s Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant represents that the PCE has operated continuously since expiration of the term, as New York Sports Club, maintaining the same hours of operation in compliance with the conditions of prior grants, and that, absent a waiver of the Board’s Rules, substantial prejudice would result; and

WHEREAS, by letter dated June 7, 2019, the Fire Department states that the subject establishment has been in existence since the original BSA special permit was issued January 13, 2004, and, to date, has never obtained a certificate of occupancy or an operating permit from DOB;

MINUTES

the alteration application (Alt. I 401705963) was approved on March 4, 2004, and the place of assembly (PA 401733317) was approved on March 19, 2004; the Fire Department objects to the extension of the special permit for the subject application; in order for the Department to support the application, they would need a detailed timeline of when the applicant and building owner will obtain the certificate of occupancy and operating permit for this PCE; the Bureau's Licensed Public Place of Assembly unit ("LPPA") issued a violation order (E469196) for failure to obtain an operating permit; based on the above, the Department requests the Board does not render a decision on the application; and

WHEREAS, at hearing, the Board raised concern regarding the applicant's failure to obtain the certificate of occupancy and place of assembly permit and continued the hearing to a later date to provide the applicant with an opportunity to perform testing and resolve issues preventing the issuance of these approvals; and

WHEREAS, by letter dated August 10, 2019, the Fire Department states that a scheduled test date for the combination (standpipe and sprinkler) system was scheduled for October 29, 2019, and a test date for the fire alarm system is being arranged; and, the Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of term is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives its Rules of Practice and Procedure and amends the resolution, dated February 27, 2007, so that, as amended, this portion of the resolution reads: "to permit an extension of term for ten (10) years, to expire on February 27, 2027, on condition that the use and operation of the site shall conform to drawings filed with this application marked 'Received September 11, 2019'-Seven (7) sheets; and on further condition:

THAT the term of this grant shall expire on February 27, 2027;

THAT the PCE shall be subject to a compliance hearing before the Board upon receipt of any complaints by neighbors;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and, Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board;

THAT minimum three (3) foot wide exit pathways to

required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act;

THAT signage shall be maintained in accordance with BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 157-06-BZ") shall be obtained within one (1) year, by August 13, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 13, 2019.

163-14-A thru 165-14-A

APPLICANT – Ponte Equities Inc.

SUBJECT – Application July 13, 2018 – Compliance Hearing.

PREMISES AFFECTED – 502, 504 and 506 Canal Street, Block 595, Lot(s) 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Compliance hearing closed; application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibett.....2

Negative:0

THE RESOLUTION –

WHEREAS, this is a compliance hearing on an administrative appeal, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with continued hearings on October 30, 2018 and May 7, 2019, and then to decision on August 13, 2019; and

MINUTES

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located at southwest corner of the intersection of Canal Street and Greenwich street, in Manhattan; the site is comprised of contiguous Lots 38, 39, and 40 on Block 595 (the "Site"); Lot 40, a corner lot, has approximately 30 feet of frontage along the west side of Greenwich Street and approximately 24 feet of frontage along the south side of Canal Street; Lot 39 has approximately 18 feet of frontage along the south side of Canal Street; Lot 38 has approximately 19 feet of frontage along the south side of Canal Street; the applicant represents that the combined lot area of the Site is 3,853 square feet; and

WHEREAS, the Site is located within a C6-2A zoning district, within the Special Tribeca Mixed Use District; the applicant states that the Site is located within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency ("FEMA"), as indicated on the Flood Insurance Rate Maps for the City of New York (the "FIRM"), and states further that each of the buildings thereupon are designated by FEMA as within Flood Zone AE; and

WHEREAS, each lot on the site is occupied by a building, and each of the three buildings are individual landmarks designated by the New York City Landmarks Preservation Commission; the building known as and located at 502 Canal Street (Lot 40) was built in 1818-19, as stated in its June 30, 1998 Designation Report, the building retains distinctive characteristics of the Federal style, and "has always had commercial space at the ground story with residential accommodations above"; the building known as and located at 504 Canal Street (Lot 39) was built c. 1841, and, as stated in its June 30, 1998 Designation Report has also "always had commercial space at the ground story with residential accommodations above"; the building known as and located at 506 Canal Street (Lot 38) was built in 1826; the June 30, 1998 Designation Report for the building known as and located at 506 Canal Street notes the building's ground-floor storefront which, the designation report states, appears to date from the original construction of the building; the three buildings on the Site are referred to collectively herein as the "Buildings"; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 13, 2016, when, under the subject calendar number, the Board granted an administrative appeal to legalize the conversion at the ground floor of the subject buildings contrary to the flood-proofing requirements of Sections BC G102 and G304.1.1 of the Building Code on condition: that the approval be limited to the relief granted by the Board in response to specifically cited objections; that all Flood Protection Measures (as defined in the resolution) (1) be installed and maintained as shown on the BSA-approved plans, and (2) tested as required in the EFMP; that the term of the grant be five (5) years from December 14, 2016 (the date on which

this resolution was released); that the Board hold a compliance hearing on the subject applications on the scheduled Board hearing date closest in time to June 14, 2018, which is eighteen (18) months from the date on which this resolution was released, (the "Initial Compliance Hearing"); that thirty (30) days prior to the Initial Compliance Hearing, the applicant submit to the Board, under the subject BSA calendar numbers, a report outlining all weather events which triggered the EAP during that period, a statement as to whether and to what extent there has been any damage to the Buildings or personal property therein, and an affidavit and photographic evidence describing and showing Landlord's response to any such damage; the applicant also provide the Board with documentation of all notification and testing required under the EFMP; that the owner of the Buildings record the Restrictive Declaration submitted in connection with this application in the Office of the City Register in New York County prior to the issuance of this resolution; the Restrictive Declaration must conform to the specified form and substance; that the owner of the Building include in any lease for any residential premises located within any of the Buildings, a Lease Rider which must conform to the specified form and substance; and that the owner of the Buildings also maintain and publish, as required, the Emergency Action Plan and Emergency Flood Measures and Procedures as set forth and contained in the Restrictive Declaration; the Emergency Action Plan and Emergency Flood Measures and Procedures substantially conform to the specified form and substance; and

WHEREAS, the applicant provided copies of flood insurance policies procured for the subject site, a bank statement evidencing required monies placed in escrow, the recorded restrictive declaration, evidence of the above EAP procedures posted in the subject site's common areas, affidavits from tenants of the subject sites, and executed lease riders; and

WHEREAS, in response to questions from the Board at hearing, the applicant furnished updated copies of flood insurance policies procured for the subject site, an updated bank statement evidencing required monies placed in escrow, and affidavits from tenants of the subject site; and

WHEREAS, the applicant submits that certificates of occupancy are nearly ready to be obtained and that no damage to the subject site has occurred as a result of adverse weather conditions; and

WHEREAS, the Board finds that the evidence in the record supports the applicant's compliance with the Board's safeguards and conditions and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *close* this compliance hearing and does hereby *reopen* and *amend* the resolution, dated December 13, 2016, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of three (3) years, expiring August 13, 2022; *on condition*:

THAT the term of this grant shall be for three (3)

MINUTES

years, expiring August 13, 2022, at which time the Board may extend or eliminate the term;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all of the Board's conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 163-14-A thru 165-14-A"), shall be obtained within three (3) years, by August 13, 2022;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 13, 2019.

186-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Bond Street Owner, LLC, owner.

SUBJECT – Application May 23, 2019 – Extension of Time of a previously approved Variance (§72-21) to permit the construction of a new hotel building with ground floor retail contrary to allowable commercial floor area (ZR 33-122) which expired on May 19, 2019. C6-1/R6B Downtown Brooklyn Special District.

PREMISES AFFECTED – 51-63 Bond Street and 252-270 Schermerhorn Street, Block 172, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a variance, granted pursuant to ZR § 72-21, which permitted the construction of a 13-story hotel (Use Group 5) with ground floor retail (Use Group 6), and expired on May 19, 2019; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is an irregular lot located on the southeast corner of the intersection of Bond Street and

Schermerhorn Street, partially within a C6-1 zoning district and partially within an R6B zoning district, within the Special Downtown Brooklyn District, in Brooklyn; and

WHEREAS, the site has an irregular shape due to its varying depths, which range from 51 feet (measured from the northeast corner of the site) to 105 feet (measured from the northwest corner of the site), has a lot area of approximately 17,960 square feet and is currently under construction; and

WHEREAS, the Board has exercised jurisdiction over the subject site, then-tax lots 5, 7, 10, 13, 14, 15 and 109, since May 19, 2015, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a 13-story hotel (Use Group 5) with ground floor retail (Use Group 6) that does not comply with the zoning requirements for floor area ratio ("FAR"), contrary to ZR § 33-122, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the following be the bulk parameters of the proposed building: a maximum of 13 stories, a maximum floor area of 154,947 square feet (8.63 FAR), a maximum building height of 139'- 4" (excluding bulkheads and parapets), and a maximum of 287 hotel rooms, as reflected on the BSA-approved drawings; the building façade abutting sites with residential buildings be consistent with the character and appearance of such buildings; all service pickups and deliveries to the site occur on the Schermerhorn Street frontage; refuse be stored within the building until immediately prior to collection; the conditions be noted on the certificate of occupancy; a permit not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the Landmarks Preservation Commission ("LPC") has issued to the Department of Buildings ("DOB"), as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by May 19, 2019; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, at hearing, upon Board request, the applicant provided a construction timeline and evidence of requisition for payment; and

WHEREAS, the applicant submits that construction is 70 percent complete; and

WHEREAS, based upon its review of the record, the Board finds that a four (4) year extension of time to complete construction is appropriate with certain conditions, as set forth below.

MINUTES

Therefore, it is Resolved, that the Board of Standards and Appeals amends the resolution, dated May 19, 2015, so that as further amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to May 19, 2023, on condition:

THAT the following shall be the bulk parameters of the proposed building: a maximum of 13 stories, a maximum floor area of 154,947 square feet (8.63 FAR), a maximum building height of 139’- 4” (excluding bulkheads and parapets), and a maximum of 287 hotel rooms, as reflected on the BSA-approved drawings;

THAT the building façade abutting sites with residential buildings shall be consistent with the character and appearance of such buildings;

THAT all service pickups and deliveries to the site shall occur on the Schermerhorn Street frontage;

THAT refuse shall be stored within the building until immediately prior to collection;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

THAT 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 May 19, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall be recorded on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 186-14-BZ”) shall be obtained by May 19, 2023;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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, August 13, 2019.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.
SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-288-BZ

CEQR #18-BSA-049Q

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – Special Permit (§73-49) to permit roof top parking on a new four-story accessory parking garage serving a four-story office building contrary to ZR §44-11. M1-1 College Point Special District.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

MINUTES

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 16, 2017, acting on New Building Application No. 421554008, reads in pertinent part:

“ZR 73-49 Roof top parking on proposed accessory off-street parking structure contrary to regulations in the zoning district as indicated”; and

WHEREAS, this is an application under ZR §§ 73-49 and 73-03 to permit, in an M1-1 zoning district and the Special College Point District, parking on the roof of a proposed accessory parking garage; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with continued hearings on November 20, 2018, February 5, 2019, March 26, 2019, May 7, 2019, and then to decision on August 13, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Queens, recommends approval of this application with the recommendation that traffic enter the subject site from Petracca Place or Whitestone Expressway and exit via Whitestone Expressway; and

WHEREAS, the Queens Borough President submitted testimony in support of this application, recommending that the applicant consider using Petracca Place as the entry point and the Whitestone Expressway service road as an exit for the proposed parking garage; and

WHEREAS, residents of the surrounding area submitted testimony in support of and in opposition to this application, citing concerns with illumination, the massing of the proposed building, air pollution, and privacy; and

WHEREAS, the subject site is located on the west side of the Whitestone Expressway, in an M1-1 zoning district and the Special College Point District, in Queens; and

WHEREAS, the subject site has approximately 25 feet of frontage along the Whitestone Expressway, 279 feet of frontage along 15th Avenue, 119,903 square feet of lot area and is vacant; and

WHEREAS, ZR § 73-49 provides that:

In C2-1, C2-2, C2-3, C2-4, C4-1, C4-2, C4-3, C4-4, C7, C8-1, C8-2, C8-3, M1-1, M1-2, M1-3, M2-1, M2-2 or M3-1 Districts, the Board of Standards and Appeals may permit the parking or storage of motor vehicles on the roof of a *public parking garage* with a total of 150 spaces or less and, in all districts, the Board may permit modifications of the applicable provisions of Sections [25-11](#), [36-11](#) or [44-11](#) (General Provisions) so as to permit *accessory* off-street parking spaces to be located on the roof of a *building*. As a condition of permitting such roof parking, the Board shall find that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for setback of roof parking areas from *lot lines*, or for shielding of floodlights; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to develop a four-story parking garage with a total of 334 accessory off-street parking spaces, 58 of which are proposed as roof parking; and

WHEREAS, the applicant submits that roof parking would not result in any adverse effects on the surrounding area; and

WHEREAS, in support of this contention, the applicant submits that the proposed parking garage incorporates a number of design features that will shield car headlights and prevent roof surface lighting from spilling over the site of the roof: two light poles supporting light fixtures placed 12’-6” above the roof center at the center of drive aisles; and a 3’-9” parapet surrounding the roof; the location of the roof parking surface 44’-0” above grade, set back 110’-0” from the adjacent R2A zoning district to the north of 15th Avenue; and

WHEREAS, the applicant supplied roof lighting diagrams showing that the roof parapet is sufficiently tall to shield car headlights and that the two light poles are below visibility levels from both sidewalks and residences’ second-floor windows along 15th Avenue; and

WHEREAS, the applicant notes that proposed roof lighting design allows for consistent lighting while restricting light spread within the parking garage’s roof and meeting applicable Building Code minimum lighting requirements for open parking lots; and

WHEREAS, in response to questions from the Board about alternative lighting schemes, the applicant also supplied a lighting report indicating that the proposed lighting design would provide more uniform light with less impact than an alternative incorporating wall packs and bollard lights because parapet wall lighting would be blocked by automobiles while also increasing visible glow caused by light reflection; and

WHEREAS, the applicant states that the proposed parking garage complies with applicable bulk regulations and would constitute an accessory use with the following hours of operation: Monday to Friday, 7:30 a.m. to 6:30 p.m.; and

WHEREAS, the Board finds that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas; and

WHEREAS, in response to questions from the Board about community concerns, the applicant proposes a dense landscaped buffer between the north wall of the proposed

MINUTES

parking garage and the residences located along 15th Avenue, including a row of mixed evergreen and deciduous shrubs in front of a row of evergreen trees along with an ivied wall trellis at the north wall of the proposed parking garage; and

WHEREAS, the applicant also proposes to screen openings at the east and west of the proposed parking garage; and

WHEREAS, in response to questions from the Board about the community board's recommendation, the applicant notes that entry to and exit from the proposed parking garage will occur via a 25'-0" wide driveway from the Whitestone Expressway west service road and that emergency access would be available from Petracca Place, a 40'-0" wide street to the west of the subject site; and

WHEREAS, after seeing these revisions, residents from the surrounding area submitted testimony in support of this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed roof parking is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed roof parking will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA049Q, dated October 23, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated November 15, 2018, the New York City Department of City Planning's Waterfront and Open Space Division represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program ("WRP") policy and that this action is consistent with WRP policies; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR

§§ 73-49 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-49 and 73-03 to *permit*, in an M1-1 zoning district and the Special College Point District, parking on the roof of a proposed accessory parking garage; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received August 9, 2019"-Seventeen (17) sheets; and *on further condition*:

THAT rooftop parking shall close no later than 6:30 p.m.;

THAT landscaping shall be provided and maintained in top condition as represented to the community and illustrated on the Board-approved drawings;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2017-288-BZ"), shall be obtained within four (4) years, by August 13, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2019.

**2018-52-BZ
CEQR #18-BSA-122K**

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

MINUTES

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on New Building Application No. 321191802, reads in pertinent part:

“Proposed numbers of Required Accessory Off-Street Parking Spaces are contrary to ZR 25-23 and 25-251”; and

WHEREAS, this is an application under ZR §§ 73-433 and 73-03 to permit, in an R6 zoning district, a reduction of existing parking spaces for income-restricted housing units, contrary to ZR §§ 25-23 and 25-251; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, April 23, 2019, June 4, 2019, August 6, 2019, and then to decision on August 13, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member Antonio Reynoso submitted testimony in support of this application; and

WHEREAS, the subject site is located on Boerum Street, between Graham Avenue and Humboldt Street, in an R6 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 300 feet of frontage along Boerum Street, 200 feet of frontage along Humboldt Street, 340 feet of frontage along Johnson Avenue, 62,000 square feet of lot area and is occupied by three 3-story residential buildings on Tax Lot 10 that contain 42 income-restricted housing units with 18 accessory off-street parking spaces; and

WHEREAS, the applicant proposes to develop a nineteen-story residential building with 100,609 square feet of floor area, totaling 138,200 square feet of floor area at the subject site (2.23 FAR), and a total of 90 off-street accessory parking spaces, 65 of which are proposed to be located at the subject site with the remaining 25 parking spaces to be located at 222 Johnson Avenue; and

WHEREAS, the applicant states that, at the subject site, a total of 108 parking spaces are required, 90 of which would be accessory to new dwelling units in the proposed development and 18 of which would be accessory to existing income-restricted housing units; and

WHEREAS, ZR § 73-433 provides:

For zoning lots within the Transit Zone with buildings containing income-restricted housing units in receipt of a certificate of occupancy prior to March 22, 2016, the Board of Standards and Appeals may permit a waiver of, or a reduction in, the number of accessory off-street parking spaces required for such income-restricted housing units prior to March 22, 2016, provided that the

Board finds that such waiver or reduction will:

- (a) facilitate an improved site plan;
- (b) facilitate the creation or preservation of affordable housing, where a development includes new residential floor area on the zoning lot;
- (c) not cause traffic congestion; and
- (d) not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as applicable, including the availability of parking spaces for such uses.

Factors to be considered by the Board may include, without limitation, the use of the existing parking spaces by residents of the zoning lot, the availability of parking in the surrounding area and the proximity of public transportation. The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the applicant submits that the subject site is located within the Transit Zone, see Appendix I of the Zoning Resolution, and is occupied by three existing three-story buildings on Tax Lot 10 that received certificates of occupancy in 1983 and that contain low-income dwelling units that meet the ZR § 12-10 “income-restricted housing units” definition because “[a]ny dwelling unit for which the applicable number of required accessory off-street parking spaces was established pursuant to the provisions of Section 25-25 (Modification of Requirements for Income-Restricted Housing Units, Affordable Independent Residences for Seniors or Other Government-Assisted Dwelling Units) as such Section existed between December 15, 1961, and March 22, 2016, shall be considered an income-restricted housing unit”; and

WHEREAS, more particularly, the applicant submits that these certificates of occupancy demonstrate that, during the existing buildings’ construction, accessory parking was provided under ZR § 25-25, which required parking for 45 percent of dwelling units subject to a federal rent-subsidy program; and

WHEREAS, the applicant states that the proposed parking reduction would allow for an improved site plan

MINUTES

because, in order to provide a total of 108 off-street parking spaces, additional two-car parking stackers would be necessary in the cellar with unenclosed three-car parking stackers at grade that would prove unsightly and inefficient and that would adversely affect the site plan; and

WHEREAS, on the other hand, the proposed parking reduction provides attended parking in the cellar (42 spaces) with 23 parking spaces at ground level and 25 accessory parking spaces located off site at 222 Johnson Avenue, and the proposed site plan allows drivers to enter the subject site by curb cut on Boerum Street to the attendant booth at the first floor, where an attendant will be tasked with parking the vehicle accordingly; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will facilitate an improved site plan; and

WHEREAS, the applicant states that the proposed parking reduction would facilitate the creation or preservation of affordable housing; and

WHEREAS, in support of this contention, the applicant provided a restrictive declaration to be recorded against the property that will ensure that at least 28 percent of dwelling units in the proposed development will be provided and maintained as affordable housing (with a minimum of 20 percent of the development's total dwelling units at 60 percent Area Median Income); and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will facilitate the creation or preservation of affordable housing; and

WHEREAS, the applicant states that none of the 18 existing off-street accessory parking spaces are currently utilized or have been for years, so the proposed parking reduction would not result in additional vehicles searching for on-street parking; and

WHEREAS, the applicant further notes that the subject site is located within the Transit Zone and is well served by public transit, including four subway lines; and

WHEREAS, additionally, the applicant notes that the proposed parking reduction would not result in increased traffic congestion because the applicant proposes to accommodate all parking demand generated by the proposed development on site; and

WHEREAS, in support of this contention, the applicant supplied a parking demand study showing that demand generated by the existing buildings and proposed development is 65 parking spaces, which are proposed to be provided on site; and

WHEREAS, the applicant states that the proposed parking facility will provide attended parking to ensure efficient operations and accommodate queuing vehicles, which will prevent vehicle's backing up onto Boerum Street; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will not cause traffic congestion; and

WHEREAS, the applicant states that the proposed parking reduction will not result in adverse effects on the

surrounding area, including availability of parking, because the proposed parking reduction does not displace any currently utilized on-site parking spaces and meets all parking demand for the proposed development and existing buildings on site; and

WHEREAS, the applicant submits the proposed attended parking facility thus keeps on-street parking spaces available for residents, businesses, and community facilities in the surrounding area; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as applicable, including the availability of parking spaces for such uses; and

WHEREAS, in response to the Board's comments at hearing, the applicant provided a draft restrictive declaration to ensure that the proposed parking reduction would facilitate the preservation or creation of affordable housing; and

WHEREAS, the applicant also increased the amount of parking proposed to ensure that parking demand would be met on site; and

WHEREAS, by letter dated August 5, 2018, the Fire Department states that the applicant shall comply with Fire Department requirements for automated parking systems; the applicant shall file plans of the existing and proposed parking stackers with the Bureau of Fire Prevention, Technical Management Unit; and that the use of parking stackers classifies the space as high-pile storage, and that the requirements for protection of these parking stackers include the following items and may require other additional fire protection not listed: installation; garage specifications; fire rating, sprinkler, and standpipe (including high-piled storage sprinkler system); ventilation (including carbon monoxide detection, smoke purge, and smoke control); heat, flame, and smoke detection; fire alarm response; garage fire alarm shutdown sequence of operations; garage emergency shutdown sequence of operations; vehicle lift markings; control panel; visual devices; lighting; firefighter staging areas; vehicle prioritizing, retrieval, and spacing; emergency shutdown; monitoring; maintenance; restrictions; emergency power; signage; hydraulic fluids; fire extinguishers; security; garage heat, flame, and smoke detection systems; Fire Department Fire Alarm Inspection Unit inspection; and Fire Department visit upon completion of installation; 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 parking reduction is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed parking reduction will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has

MINUTES

documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA122K, dated August 8, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-433 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-433 and 73-03 *permit*, in an R6 zoning district, a reduction of existing parking spaces for income-restricted housing units, contrary to ZR §§ ; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received August 12, 2019"-Twelve (12) sheets; and *on further condition*:

THAT the number of off-street accessory parking spaces illustrated on the Board-approved drawings shall be provided as follows: 90 total parking spaces, with 65 spaces on site and 25 spaces at 222 Johnson Avenue;

THAT the parking layout shall be subject to review and approval by the Department of Buildings;

THAT DOB shall verify that the rear yard equivalent relocation complies with applicable zoning regulations;

THAT the applicant shall comply with Fire Department requirements for automated parking systems, including that the applicant shall file plans of the existing and proposed parking stackers with the Bureau of Fire Prevention, Technical Management Unit; and that the use of parking stackers classifies the space as high-pile storage, and that the requirements for protection of these parking stackers include the following items and may require other additional fire protection not listed: installation; garage specifications; fire rating, sprinkler, and standpipe (including high-piled storage sprinkler system); ventilation (including carbon monoxide detection, smoke purge, and smoke control); heat, flame, and smoke detection; fire alarm response; garage fire alarm shutdown sequence of operations; garage emergency

shutdown sequence of operations; vehicle lift markings; control panel; visual devices; lighting; firefighter staging areas; vehicle prioritizing, retrieval, and spacing; emergency shutdown; monitoring; maintenance; restrictions; emergency power; signage; hydraulic fluids; fire extinguishers; security; garage heat, flame, and smoke detection systems; Fire Department Fire Alarm Inspection Unit inspection; and Fire Department visit upon completion of installation;

THAT a restrictive declaration, City Register File Number 2019000313786, shall be recorded against the property prior to the issuance of the Board's resolution substantially conforming to the form and substance of the following:

DECLARATION, made this ____ day of _____, 2019, by SPG Boerum LLC ("Declarant") having an office at 38 East 29th Street, New York, New York, 10016.

WHEREAS, the Declarant is the lessee of certain land located in the City and State of New York, Borough of Brooklyn, designated as Block 3071, Lot 40 on the Tax Map of the City of New York (the "Development Site") for a term of 99 years pursuant to a lease dated June 22, 2015 and amended by letter agreement dated May 16, 2016, as assigned to the landlord by Assignment and Assumption of Lease Agreement dated August 16, 2016;

WHEREAS, the Development Site is part of a single zoning lot together with adjacent property designated as Block 3071, Lot 10 on the Tax Map of the City of New York (together, the "Premises"), which Premises is more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Premises is improved with three 3-story Section 8 housing buildings (the "Existing Buildings") which contain 42 "income-restricted housing units" as defined by Section 12-10 of the New York City Zoning Resolution ("ZR"). 18 accessory parking spaces are provided in an open parking lot on the Development Site for the 42 "income-restricted housing units", pursuant to the parking requirements of former ZR §25-25, as amended, in effect in 1981. See Certificate of Occupancy No. 220870, dated January 14, 1983, Certificate of Occupancy No. 220872, dated January 14, 1983, and Certificate of Occupancy No. 220867, dated January 13, 1983, in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2018-52-BZ that the New York City Board of Standards and Appeals (the "Board") grant a special permit, under ZR §73-433 (the "Special Permit"), to waive the 18 off-street parking spaces that are

MINUTES

accessory to the Existing Buildings;

WHEREAS, the special permit requires that the elimination of accessory parking for the 42 existing “income-restricted housing units” facilitate the creation or preservation of affordable housing on the zoning lot;

WHEREAS, the grant of the Special Permit will facilitate the construction of a 19-story, 161-unit residential building on the Development Site (the “Proposed Building”) with 32 “income-restricted housing units”, 13 units that are not “income-restricted housing units” but that are subject to rental restrictions for a term of 30 years pursuant to a Corrective Declaration of Restrictive Covenant dated August 16, 2016 and recorded against the Development Site under CRFN No. 2016000444958, and 85 market rate units. Pursuant to ZR §25-251, no parking spaces are required for the 32 “income-restricted housing units.” Pursuant to ZR §25-23, 90 parking spaces are required for the 129 other housing units in the Proposed Building. The portion of the Development Site presently occupied by the existing 18-space parking lot will be developed with the Proposed Building and 65 parking spaces; the remaining 25 required parking spaces will be provided off-site within the proposed development at 222 Johnson Avenue, Brooklyn (Block 3072, Lot 40) in accordance with ZR §25-52; and

WHEREAS, the Board requires Declarant to execute and record in the Office of the City Register of the City of New York this restrictive declaration prior to obtaining a Certificate of Occupancy for the Development Site;

NOW THEREFORE, in consideration of the Board’s approval of the Special Permit, Declarant does hereby declare that Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. If any of the 42 units in the Existing Buildings cease to be “income-restricted housing units” as defined by ZR §12-10 or if any of the 32 “income-restricted housing units” as defined by ZR §12-10 in the Proposed Building cease to be “income restricted housing units”, Declarant shall provide accessory parking as required by the Zoning Resolution;
2. This declaration may not be modified, amended or terminated without the prior written consent of the Board;
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives,

successors and assigns;

4. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including, but not limited to, the Special Permit; and
5. This declaration shall be recorded at the city register’s (county clerk’s) office against the Premises and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any buildings located on the Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT a restrictive declaration for off-site accessory parking located at 222 Johnson Avenue, as required by the Department of Buildings, shall be recorded prior to the issuance of any building permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-52-BZ”), shall be obtained within four (4) years, by August 13, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2019.

2018-55-BZ

CEQR #18-BSA-125K

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley Brown.....3
Absent: Commissioner Sheta and Commissioner Scibetta....2
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on New Building Application No. 321196503, reads in pertinent part:

“Proposed number of accessory parking spaces on zoning lot does not comply” “ZR 25-23/25-251”;
and

WHEREAS, this is an application under ZR §§ 73-433 and 73-03 to permit, partially in an R6 zoning district and partially in an R6 (C1-3) zoning district, a reduction of existing parking spaces for income-restricted housing units, contrary to ZR §§ 25-23 and 25-251; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with continued hearings on February 12, 2019, April 23, 2019, June 4, 2019, August 6, 2019, and then to decision on August 13, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member Antonio Reynoso submitted testimony in support of this application; and

WHEREAS, the subject site is located on the block bounded by Johnson Avenue, Humboldt Street, Boerum Street, and Bushwick Avenue, partially in an R6 zoning district and partially in an R6 (C1-3) zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 400 feet of frontage along Johnson Avenue, 200 feet of frontage along Humboldt Street, 400 feet of frontage along Boerum Street, 200 feet of frontage along Bushwick Avenue, 80,000 square feet of lot area and is occupied by three residential buildings on Tax Lot 1 that contain 79 income-restricted housing units with 34 accessory off-street parking spaces; and

WHEREAS, the applicant proposes to develop a seven-story mixed-use commercial and residential building resulting in 168,578 square feet of total floor area (2.169 FAR), with 160,676 square feet of residential floor area (1.909 FAR) and 7,902 square feet of commercial floor area (0.26 FAR), and a total of 88 off-street accessory parking spaces, 46 of which are to be accessory to the proposed development with the remaining 25 parking spaces to be accessory to an off-site residential building under construction at 159 Boerum Street; and

WHEREAS, the applicant states that, at the subject site, a total of 80 parking spaces are required, 46 of which would be accessory to new dwelling units in the proposed

development and 34 of which would be accessory to existing income-restricted housing units; and

WHEREAS, ZR § 73-433 provides:

For *zoning lots* within the *Transit Zone* with *buildings* containing *income-restricted housing units* in receipt of a certificate of occupancy prior to March 22, 2016, the Board of Standards and Appeals may permit a waiver of, or a reduction in, the number of *accessory* off-street parking spaces required for such *income-restricted housing units* prior to March 22, 2016, provided that the Board finds that such waiver or reduction will:

- (a) facilitate an improved site plan;
- (b) facilitate the creation or preservation of affordable housing, where a *development* includes new *residential floor area* on the *zoning lot*;
- (c) not cause traffic congestion; and
- (d) not have undue adverse effects on residents, businesses or *community facilities* in the surrounding area, as applicable, including the availability of parking spaces for such *uses*.

Factors to be considered by the Board may include, without limitation, the use of the existing parking spaces by residents of the *zoning lot*, the availability of parking in the surrounding area and the proximity of public transportation. The Board may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the applicant submits that the subject site is located within the Transit Zone, *see* Appendix I of the Zoning Resolution, and is occupied by three existing three-story buildings on Tax Lot 1 that received certificates of occupancy in 1983 and that contain low-income dwelling units that meet the ZR § 12-10 “income-restricted housing units” definition because “[a]ny *dwelling unit* for which the applicable number of required *accessory* off-street parking spaces was established pursuant to the provisions of Section 25-25 (Modification of Requirements for Income-Restricted Housing Units, Affordable Independent Residences for Seniors or Other

MINUTES

Government-Assisted Dwelling Units) as such Section existed between December 15, 1961, and March 22, 2016, shall be considered an *income-restricted housing unit*”; and

WHEREAS, more particularly, the applicant submits that these certificates of occupancy demonstrate that, during the existing buildings’ construction, accessory parking was provided under ZR § 25-25, which required parking for 45 percent of dwelling units subject to a federal rent-subsidy program; and

WHEREAS, the applicant states that the proposed parking reduction would allow for an improved site plan because, in order to provide a total of 80 off-street parking spaces, additional two-car parking stackers would be necessary in the cellar with unenclosed three-car parking stackers at grade that would prove unsightly and inefficient and that would adversely affect the site plan; and

WHEREAS, on the other hand, the proposed parking reduction provides attended parking in the cellar (88 spaces) with 63 spaces accessory to the proposed development and 25 spaces an off-site residential building under construction at 159 Boerum Street, and the proposed site plan allows drivers to enter the subject site by curb cut on Johnson Avenue to the attendant booth at the first floor, where an attendant will be tasked with parking the vehicle accordingly; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will facilitate an improved site plan; and

WHEREAS, the applicant states that the proposed parking reduction would facilitate the creation or preservation of affordable housing; and

WHEREAS, in support of this contention, the applicant provided a restrictive declaration to be recorded against the property that will ensure that at least 28 percent of dwelling units in the proposed development will be provided and maintained as affordable housing (with a minimum of 20 percent of the development’s total dwelling units at 60 percent Area Median Income); and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will facilitate the creation or preservation of affordable housing; and

WHEREAS, the applicant states that the 34 existing off-street accessory parking spaces have been underutilized for years, so the proposed parking reduction would not result in additional vehicles searching for on-street parking; and

WHEREAS, the applicant further notes that the subject site is located within the Transit Zone and is well served by public transit, including four subway lines; and

WHEREAS, additionally, the applicant notes that the proposed parking reduction would not result in increased traffic congestion because the applicant proposes to accommodate all parking demand generated by the proposed development on site; and

WHEREAS, in support of this contention, the applicant supplied a parking demand study showing that demand generated by the existing buildings and proposed development is 63 parking spaces, which are proposed to be

provided on site; and

WHEREAS, the applicant states that the proposed parking facility will provide attended parking to ensure efficient operations and accommodate queuing vehicles, which will prevent vehicle’s backing up onto Johnson Avenue, and that the proposed parking facility has been designed with a long ramp and reservoir spaces adjacent to the attendant’s booth; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will not cause traffic congestion; and

WHEREAS, the applicant states that the proposed parking reduction will not result in adverse effects on the surrounding area, including availability of parking, because the proposed parking reduction does not displace any currently utilized on-site parking spaces and meets all parking demand for the proposed development and existing buildings on site; and

WHEREAS, the applicant submits the proposed attended parking facility thus keeps on-street parking spaces available for residents, businesses, and community facilities in the surrounding area; and

WHEREAS, accordingly, the Board finds that the proposed parking reduction will not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as applicable, including the availability of parking spaces for such uses; and

WHEREAS, in response to the Board’s comments at hearing, the applicant provided a draft restrictive declaration to ensure that the proposed parking reduction would facilitate the preservation or creation of affordable housing; and

WHEREAS, the applicant also increased the amount of parking proposed to ensure that parking demand would be met on site; and

WHEREAS, by letter dated August 7, 2018, the Fire Department states that the applicant shall comply with Fire Department requirements for automated parking systems; the applicant shall file plans of the existing and proposed parking stackers with the Bureau of Fire Prevention, Technical Management Unit; and that the use of parking stackers classifies the space as high-pile storage, and that the requirements for protection of these parking stackers include the following items and may require other additional fire protection not listed: installation; garage specifications; fire rating, sprinkler, and standpipe (including high-piled storage sprinkler system); ventilation (including carbon monoxide detection, smoke purge, and smoke control); heat, flame, and smoke detection; fire alarm response; garage fire alarm shutdown sequence of operations; garage emergency shutdown sequence of operations; vehicle lift markings; control panel; visual devices; lighting; firefighter staging areas; vehicle prioritizing, retrieval, and spacing; emergency shutdown; monitoring; maintenance; restrictions; emergency power; signage; hydraulic fluids; fire extinguishers; security; garage heat, flame, and smoke detection systems; Fire Department Fire Alarm Inspection Unit inspection; and Fire

MINUTES

Department visit upon completion of installation; 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 parking reduction is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed parking reduction will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA125K, dated August 8, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-433 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-433 and 73-03 to *permit*, partially in an R6 zoning district and partially in an R6 (C1-3) zoning district, a reduction of existing parking spaces for income-restricted housing units, contrary to ZR §§ 25-23 and 25-251; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received August 12, 2019"-Thirteen (13) sheets; and *on further condition*:

THAT there shall be a minimum of 88 off-street accessory parking spaces, as illustrated on the Board-approved drawings;

THAT the parking layout shall be subject to review and approval by the Department of Buildings;

THAT DOB shall verify that any rear yard equivalent relocation complies with applicable zoning regulations;

THAT the applicant shall comply with Fire Department requirements for automated parking systems, including that the applicant shall file plans of the existing and proposed parking stackers with the Bureau of Fire Prevention, Technical Management Unit; and that the use of parking stackers classifies the space as high-pile storage, and that the requirements for protection of these parking stackers include the following items and may require other additional fire protection not listed: installation; garage specifications; fire rating, sprinkler, and standpipe (including high-piled storage sprinkler system); ventilation (including carbon monoxide detection, smoke purge, and smoke control); heat, flame, and smoke detection; fire alarm response; garage fire alarm shutdown sequence of operations; garage emergency shutdown sequence of operations; vehicle lift markings; control panel; visual devices; lighting; firefighter staging areas; vehicle prioritizing, retrieval, and spacing; emergency shutdown; monitoring; maintenance; restrictions; emergency power; signage; hydraulic fluids; fire extinguishers; security; garage heat, flame, and smoke detection systems; Fire Department Fire Alarm Inspection Unit inspection; and Fire Department visit upon completion of installation;

THAT a restrictive declaration, City Register File Number 2019000313787, shall be recorded against the property prior to the issuance of the Board's resolution substantially conforming to the form and substance of the following:

DECLARATION, made this ____ day of _____, 2019, by SPG Johnson LLC ("Declarant") having an office at 38 East 29th Street, New York, New York, 10016.

WHEREAS, the Declarant is the lessee of certain land located in the City and State of New York, Borough of Brooklyn, designated as Block 3072, Lot 40 on the Tax Map of the City of New York (the "Development Site") for a term of 99 years pursuant to a lease dated June 22, 2015 and amended by letter agreement dated May 16, 2016, as assigned to the landlord by Assignment and Assumption of Lease Agreement dated August 16, 2016;

WHEREAS, the Development Site is part of a single zoning lot together with adjacent property designated as Block 3072, Lot 1 on the Tax Map of the City of New York (together, the "Premises"), which Premises is more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Premises is improved with two 3-story and one 2-story Section 8 housing buildings (the "Existing Buildings") which contain 79 "income-restricted housing units" as defined by Section 12-10 of the New York City Zoning Resolution ("ZR"). 34 accessory parking spaces are provided in an open parking lot on the Development Site for the 79 "income-restricted

MINUTES

housing units”, pursuant to the parking requirements of former ZR §25-25, as amended, in effect in 1981. See Certificate of Occupancy No. 220871, dated January 14, 1983, Certificate of Occupancy No. 220897, dated January 24, 1983, and Certificate of Occupancy No. 220868, dated January 13, 1983, in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2018-55-BZ that the New York City Board of Standards and Appeals (the “Board”) grant a special permit, under ZR §73-433 (the “Special Permit”), to waive the 34 off-street parking spaces that are accessory to the Existing Buildings;

WHEREAS, the special permit requires that the elimination of accessory parking for the 79 existing “income-restricted housing units” facilitate the creation or preservation of affordable housing on the zoning lot;

WHEREAS, the grant of the Special Permit will facilitate the construction of a 7-story, 116-unit residential building on the Development Site (the “Proposed Building”) with 24 “income-restricted housing units”, 8 units that are not "income-restricted housing units" but that are subject to rental restrictions for a term of 30 years pursuant to a Corrective Declaration of Restrictive Covenant dated August 16, 2016 and recorded against the Development Site under CRFN No. 2016000444959, and 84 market rate units. Pursuant to ZR §25-251, no parking spaces are required for the 24 “income-restricted housing units.” Pursuant to ZR §25-23, 46 parking spaces are required and will be provided for the 92 other housing units in the Proposed Building. The portion of the Development Site presently occupied by the existing 34-space parking lot will be developed with the Proposed Building and 88 parking spaces (46 required parking spaces, 17 additional permitted spaces and 25 off-site accessory parking spaces required

for the development at 159 Boerum Street, Brooklyn (Block 3071, Lot 40) in accordance with ZR §25-52; and

WHEREAS, the Board requires Declarant to execute and record in the Office of the City Register of the City of New York this restrictive declaration prior to obtaining a Certificate of Occupancy for the Development Site;

NOW THEREFORE, in consideration of the Board’s approval of the Special Permit, Declarant does hereby declare that Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. If any of the 79 units in the Existing Buildings cease to be “income-restricted housing units” as defined by ZR §12-10 or if any of the 24 “income-restricted housing units” as defined by ZR §12-10 in the Proposed Building cease to be “income restricted housing units”, Declarant shall provide accessory parking as required by the Zoning Resolution;
2. If the total number of units in the Proposed Building increases beyond the proposed 116 units, the Declarant shall return to the Board for approval;
3. This declaration may not be modified, amended or terminated without the prior written consent of the Board;
4. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including, but not limited to, the Special Permit; and
6. This declaration shall be recorded at the city register’s (county clerk’s) office against the Premises and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any buildings located on the Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT a restrictive declaration for off-site accessory parking, as required by the Department of Buildings, shall be recorded prior to the issuance of any building permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-55-BZ”), shall be obtained within four (4) years, by August 13, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or

MINUTES

configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals,
August 13, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for continued hearing.

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.

SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta...3
Absent: Commissioner Sheta and Commissioner Scibetta...2
Negative:0

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for decision, hearing closed.

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – Special Permit (§73-622) for the enlargement of an existing single family-home contrary to floor area, open space and lot coverage (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for adjourned hearing.

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M. for continued hearing.

2018-141-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Davidov, owner.

SUBJECT – Application August 28, 2018 – Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district.

PREMISES AFFECTED – 110-37 68th Drive, Block 2227, Lot 48, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2018-154-BZ

APPLICANT – Law Office of Lyra J. Altman, for Simcha Gruenburg and Libby Gruenburg, owners.

SUBJECT – Application October 11, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 966 East 24th Street, Block 7587, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

MINUTES

2019-15-BZ

APPLICANT – Akerman LLP, for CS Cooper Avenue LLC, owner.

SUBJECT – Application January 18, 2019– Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Children of America*) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 79-40 Cooper Avenue, Block 3803, 3804, Lot(s) 39, 1, 39, 164, 178, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M. for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 13, 2019

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

Absent: Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-324-BZ

CEQR #18-BSA-078M

APPLICANT – Schoeman Updike Kaufman & Gerger LLP, for Ames Associates, owner; Performix House, LLC, lessee.

SUBJECT – Application December 22, 2017– Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Performix House*) to be located on the second floor of an existing building contrary to ZR §32-10. C6-4M and C6-2 zoning district.

PREMISES AFFECTED – 80 Fifth Avenue, Block 577, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated December 5, 2017, acting on Department of Buildings (“DOB”) Application No. 123337656, reads in pertinent part:

Proposed Physical Culture Establishment [as defined in Section ZR 12-10] is not permitted as of right in C6-4M and C6-2M zoning districts and is contrary to Section ZR 32-10; Use as the physical culture health establishment in C6-4M

and C6-2M zoning districts shall comply with regulation of Section ZR 32-31 (uses permitted by special permit of the Board of Standards and Appeals); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-4M zoning district and partially within a C6-2M zoning district, a physical culture establishment (“PCE”) on a portion of the second floor of an existing 16-story with cellar and penthouse commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Fifth Avenue and West 14th Street, located partially within a C6-4M zoning district and partially within a C6-2M zoning district in Manhattan; and

WHEREAS, the site has approximately 73 feet of frontage along Fifth Avenue, 107 feet of frontage along West 14th Street, 7,820 square feet of lot area and is occupied by an existing 16-story with cellar and penthouse commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 13, 1996, when, under BSA Cal. No. 145-95-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize, on a site located in a then-C6-4 zoning district, a PCE on the second floor of the subject building, operated as Lucille Roberts, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the special permit be limited to a term of six (6) years, to expire November 13, 2002; the hours of operation be limited to 6:00 a.m. to 11:00 p.m., Monday through Friday, and 7:00 a.m. to 9:00 p.m., Saturday and Sunday; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-36, by November 13, 2000; and

WHEREAS, on February 3, 2004, under BSA Cal. No. 145-95-BZ, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for ten (10) years, to expire on November 13, 2012, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; the approval be

MINUTES

limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a

report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 7,550 square feet of floor area on the second floor with areas for reception, training, weights, sled work, dance studio, locker rooms with restrooms and showers, offices, mechanical equipment, security and storage; and

WHEREAS, the PCE began operation in February 2018, as "Performix House," with the following hours of operation: Monday through Friday, 5:30 a.m. to 10:00 p.m.; and weekends, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building, sound attenuation measures have been installed within the PCE to minimize potential sound and vibration impacts to other tenants; these measures include varying types of soundproof flooring on layers of foam on top of a soundproofing concrete base; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is contained entirely within an existing building located on a major retail corridor, and there has been PCE use within the subject building for over 20 years; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and represents that the PCE will provide a benefit to the surrounding area by adding to the retail traffic and diversity to the mix of nearby retail; and

WHEREAS, the applicant states that a wet sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—are maintained within the PCE space; and

WHEREAS, by letter dated August 10, 2019, the Fire Department states that the Bureau's Licensed Public Place of Assembly ("LPPA") unit inspected the premises and issued a violation order for failure to obtain an operating permit; the fire alarm, standpipe and sprinkler systems were inspected and tested satisfactorily to the Department standards; and, the Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. CEQR #18-BSA-078M, dated November 7, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-4M zoning district and partially within a C6-2M zoning district, the operation of a physical culture establishment on a portion of the second floor of an existing 16-story with cellar and penthouse commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application

marked "Received July 10, 2019"- Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 1, 2028;

THAT a place of assembly permit shall be obtained for the PCE space;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2017-324-BZ"), shall be obtained within one (1) year, by August 13, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2019.

2018-19-BZ

CEQR #18-BSA-096M

APPLICANT – Francis R. Angelino, Esq., for 119 W 23 Acquisition LLC, owner; Humming Puppy, Inc., lessee.

SUBJECT – Application February 7, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Humming Puppy*) within a portion of the second floor of an existing building contrary to ZR §32-10. M1-6 and C6-3X zoning district.

PREMISES AFFECTED – 119 West 23rd Street, Block 799, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #4M

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated January 18, 2019, acting on Department of Buildings (“DOB”) Application No. 123129480, reads in pertinent part:

Physical cultur[e] establishment is not permitted in any district; provide BSA approval for physical cultur[e] establishment; proposed change of use to a physical cultur[e] establishment as defined by ZR 12-10 is contrary to ZR 42-10 not permitted as of right in C6-3X and M1-6; shall be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-3X zoning district and partially within an M1-6 zoning district, a physical culture establishment (“PCE”) on a portion of the second floor of an existing ten- (10) story with cellar commercial building, contrary to ZR §§ 32-10 and 42-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is a through lot with frontage on both West 23rd Street and West 24th Street, between Avenue of the Americas and Seventh Avenue, located partially within a C6-3X zoning district and partially within an M1-6 zoning district in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 23rd Street, 198 feet of depth, 9,875 square feet of lot area and is occupied by an existing ten- (10) story with cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*¹ is so located as not to impair the essential character or the future use or development of the surrounding area; and

- (2) that such *use* contains:

- (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 4,157 square feet of floor area on the second floor with a yoga studio, restrooms, and spaces for reception, laundry and storage; and

WHEREAS, the PCE began operation in April 2018, as “Humming Puppy,” with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; and weekends, 7:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building and is a yoga studio, sound attenuation materials are maintained within the PCE to insulate any sound and restrict it completely within the studio; these measures include: acoustic batts for the full depth of the yoga studio wall, acoustical sealants at intersections of the wall with the floor and ceiling slabs, furring on walls topped with two (2) layers of wallboard and impact resistant drywall; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in a commercial neighborhood containing a mix of community facilities, commercial and residential uses, as well as other PCEs; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement and weight reduction; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is contained entirely within an existing building and the operation of the PCE and yoga studio are designed for quiet operation; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—are maintained within the PCE space; and

WHEREAS, by letter dated August 10, 2019, the Fire Department states that the Bureau’s Licensed Public Place of Assembly (“LPPA”) unit inspected the premises and confirmed that the occupant load is below the requirements

for a public assembly operating permit; the standpipe and sprinkler system is overdue for flow and hydrostatic testing and the Bureau’s Fire Suppression Unit has issued violation orders to the property owner and will enforce such orders for non-compliance; and, the Department has no objection to the Board’s rendering a decision on the subject application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-096M, dated April 9, 2019; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the operation of a PCE on a portion of the second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-3X zoning district and partially within an M1-6 zoning district, the operation of a physical culture establishment on a portion of the second floor of an existing ten- (10) story with cellar commercial building, contrary to ZR §§ 32-10 and 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 9, 2019”-Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2028;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms

MINUTES

and a connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-19-BZ”), shall be obtained within one (1) year, by August 13, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2019.

2019-10-BZ

CEQR #19-BSA-073M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Park South Tenants Corporation, owner; 305 Fitness Studio 58th St. LLC, lessee.

SUBJECT – Application January 18, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*305 Fitness*) to be located on the first floor of an existing commercial building contrary to ZR §32-10. C5-1/R10H zoning district.

PREMISES AFFECTED – 205 West 58th Street, aka 920 7th Avenue, Block 1030, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley Brown.....3

Absent: Commissioner Sheta and Commissioner Scibetta....2

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated January 7, 2019, acting on Department of Buildings (“DOB”) Application No. 123485674, reads in pertinent part:

Proposed Physical Culture Establishment is not the permitted as-of-right per ZR 32-31. Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C5-

1 zoning district and partially within an R10H zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 33-story with cellar, sub-cellar and basement mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, the subject site is bounded by West 58th Street to the south, Seventh Avenue to the east, Central Park South to the north, located partially within a C5-1 zoning district and partially within an R10H zoning district in Manhattan; and

WHEREAS, the site has approximately 175 feet of frontage along West 58th Street, 201 feet of frontage along Seventh Avenue, 150 feet of frontage along Central Park South, 32,635 square feet of lot area and is occupied by an existing 33-story with cellar, sub-cellar and basement mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 3,363 square feet of floor area on the first floor, in a portion of the building located wholly within the C5-1 portion of the lot, with an exercise studio, men's and women's locker rooms and areas for retail and reception; and

WHEREAS, the PCE began operation in June 2019, as "305 Fitness," with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 9:30 a.m. to 5:30 p.m.; and

WHEREAS, the applicant states that, while a majority of the operation does not utilize free weights, sound attenuation materials are maintained within the PCE to ensure that sound levels will not exceed 45 dBA in other areas of the building; these measures include: full "box-within-box" construction of the exercise studio with four (4) layers of acoustical fill in the ceiling, insulation-filled walls and an isolated floor; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in a commercial neighborhood and entirely within a mixed-use building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will be an asset to the local area; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, including a connection of the interior fire alarm system to an FDNY-approved central station, are maintained within the PCE space; and

WHEREAS, by letter dated August 10, 2019, the Fire Department states that the Bureau's Licensed Public Place of Assembly ("LPPA") unit inspected the premises and confirmed that a public assembly operating permit is not required; the fire alarm and sprinkler systems were inspected and tested satisfactorily to the Department's standards; and, the Department has no objection to the Board rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-073M, dated January 22, 2019; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the

MINUTES

PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C5-1 zoning district and partially within an R10H zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing 33-story with cellar, sub-cellar and basement mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 1, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 1, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system, including a connection of the interior fire alarm system to an FDNY-approved central station, shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-10-BZ”), shall be obtained within one (1) year, by August 13, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 13, 2019.

2019-7-BZ

APPLICANT – Francis R. Angelino, Esq., for Westchester Country Club Land Association, Inc., owner.

SUBJECT – Application January 14, 2019 – Special Permit (§73-121) to permit a proposed educational training facility (Fordham University Sailing and Rowing Team) contrary to ZR §22-10. R2 zoning district.

PREMISES AFFECTED – 3341 Country Club Road, Block 5409, Lot 470, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2019-34-BZ

APPLICANT – Jodi Stein, of Herrick, Feinstein, LLP, for The Reece School, owner.

SUBJECT – Application February 15, 2019 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) (*The Reese School*) contrary to ZR 24-522 (street wall). R7-2 zoning district.

PREMISES AFFECTED – 25-27 East 104th Street, Block 1610, Lot(s) 11 and 12, Borough of Manhattan.

COMMUNITY BOARD #11M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta...3

Absent: Commissioner Sheta and Commissioner Scibetta...2

Negative:0

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for decision, hearing closed.

2019-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jimmy Guindi, owner.

SUBJECT – Application February 28, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-47 (rear yard); ZR 23-143 (open space) and 23-461(a) (side yard). R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2311 East 4th Street, Block 7156, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M. for continued hearing.

MINUTES

2019-49-BZ

APPLICANT – Jay Goldstein, Esq., for 1 Nassau Owner LLC, owner; Vital East LLC, lessee.

SUBJECT – Application August 13, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Vital Climbing Gym) contrary to ZR §42-10. M1-1 and M1-2 zoning districts.

PREMISES AFFECTED – 221 North 14th Street, Block 2639, Lot(s) 7&9, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2019-50-BZ

APPLICANT – Jay Goldstein, Esq., for DLMC Inc., owner; Trinity Boxing and Athletic Club Inc., lessee.

SUBJECT – Application March 18, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Trinity Boxing*) on portions of the cellar, first and mezzanine level of an existing building contrary to ZR §42-10. C6-2A zoning districts.

PREMISES AFFECTED – 116 Duane Street, Block 150, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M. for continued hearing.

2019-61-BZ

APPLICANT – Jay Goldstein, Esq., for Morris Spitzer, owner.

SUBJECT – Application March 22, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-141 (FAR & open space ratio); ZR 23-461(a) (side yard) and 23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1370 East 24th Street, Block 7659, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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September 20, 2019

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| OFFICE - | 250 Broadway, 29th Floor, New York, N.Y. 10007 |
| HEARINGS HELD - | 22 Reade Street, Spector Hall, New York, N.Y. 10007 |
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CONTENTS

| | |
|------------------------------------|---------|
| DOCKET | 679-683 |
| CALENDAR of October 3, 2019 | |
| Morning | 684/685 |
| Afternoon | 685/686 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, September 10, 2019**

Morning Calendar687

Affecting Calendar Numbers:

| | |
|---------------------------------|---|
| 536-66-BZ | 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Queens |
| 130-88-BZ | 3602 Snyder Avenue, Brooklyn |
| 194-97-BZ | 84-12 164 th Street, Queens |
| 245-03-BZ | 160-11 Willets Point Boulevard, Queens |
| 140-14-A | 1016 East 13 th Street, Brooklyn |
| 2017-5-A thru 2017-7-A | 620A, 620B, 620C Sharrotts Road, Staten Island |
| 2019-45-A | 10002 Farragut Road, Brooklyn |
| 205-15-A thru 214-15-A | 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Queens |
| 2016-4302-A thru 2016-4326-A | 92 to 120 Cupidity Drive and 201 to 225 Avidita Place, Staten Island |
| 2016-4355-A thru 2016-4462-A | 301-465 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2017-107-A thru 2017-129-A | 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2017-310-A | 10002 Farragut Road, Brooklyn |
| 2019-51-A thru 2019-57-A | 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2019-89-A | 36 West 66 th Street aka 50 West 66 th Street, Manhattan |
| 2019-94-A | 36 West 66 th Street aka 50 West 66 th Street, Manhattan |
| 2019-34-BZ | 25-27 East 104 th Street, Manhattan |
| 17-15-BZ | 133 Beach 5 th Street, Queens |
| 77-15-BZ | 244-36 85 th Avenue, Queens |
| 263-15-BZ | 45/47 Little Clove Road, Staten Island |
| 2018-116-BZ | 1982 Utica Avenue, Brooklyn |
| 268-14-BZ | 231-06/10 Northern Boulevard, Queens |
| 157-15-BZ | 3925 Bedford Avenue, Brooklyn |
| 2017-231-BZ | 765 Pennsylvania Avenue, Brooklyn |
| 2017-233-BZ | 446-448 Park Avenue, Brooklyn |
| 2017-243-BZ | 29-16 Francis Lewis Boulevard, aka 29-29 172 nd Street, Queens |
| 2017-270-BZ | 1434 Utica Avenue, Brooklyn |
| 2017-272-BZ | 10-19 46 th Road, Queens |
| 2018-3-BZ | 154-160 West 124 th Street, Manhattan |
| 2018-53-BZ | 104 DeGraw Street, Brooklyn |

Afternoon Calendar708

Affecting Calendar Numbers:

| | |
|-------------|------------------------------|
| 2019-86-BZ | 2702 Avenue N, Brooklyn |
| 2019-87-BZ | 2624 Avenue M, Brooklyn |
| 2018-177-BZ | 2061 Ocean Parkway, Brooklyn |
| 2019-29-BZ | 30 Clinton Avenue, Brooklyn |

DOCKETS

New Case Filed Up to September 10, 2019

2019-204-BZ

29-22 Northern Boulevard, Block 00239, Lot(s) 7501, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Planet Fitness) on portions of the cellar and first floor of a 44-story residential and commercial building contrary to ZR §42-10. M1-6/R10 Special Long Island City Mixed Use District located with Queens Plaza Subdistrict A-1 M1-6/R10 district.

2019-205-BZ

485 Van Sinderen Avenue, Block 3799, Lot(s) 0001, Borough of **Brooklyn, Community Board: 5**. Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 ZD. M1-1 district.

2019-206-BZ

51-22 Roosevelt Avenue, Block 1320, Lot(s) 0012, Borough of **Queens, Community Board: 2**. Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-3/R6 zoning district 2 district.

2019-207-A

32-35 Queens Boulevard, Block 00244, Lot(s) 0050, Borough of **Queens, Community Board: 2**. Appeal of a New York City Department of Buildings determination. M1-4 district.

2019-208-A

6 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-209-A

10 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-210-A

12 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-211-A

14 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-212-A

16 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-213-A

18 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-214-A

20 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-215-A

24 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

DOCKETS

2019-216-A

30 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-217-A

32 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-218-A

34 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-219-A

36 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-220-A

38 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-221-A

40 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-222-A

44 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-223-A

48 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-224-A

50 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of Seventeen (17) attached single-family homes not fronting on a final mapped street contrary to General City Law §36. C3A Special South Richmond District. C3A SRD district.

2019-225-BZ

54 Tennyson Drive, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-226-BZ

76 Tennyson Drive, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-227-BZ

100 Tennyson Drive, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

DOCKETS

2019-228-BZ

348 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-229-BZ

350 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-230-BZ

354 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-231-BZ

360 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-232-BZ

362 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-233-BZ

364 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-234-BZ

366 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-235-BZ

368 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-236-BZ

370 Nelson Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-237-BZ

6 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-238-BZ

10 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-239-BZ

12 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-240-BZ

14 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-241-BZ

16 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

DOCKETS

2019-242-BZ

18 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-243-BZ

20 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-244-BZ

24 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-245-BZ

30 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-246-BZ

32 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-247-BZ

34 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-248-BZ

36 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-249-BZ

38 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-250-BZ

40 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-251-BZ

44 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-252-BZ

48 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district. C3A SRD district.

2019-253-BZ

50 Fitzgerald Avenue, Block 05212, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A Special South Richmond District. C3A SRD district.

2019-254-BZ

415 Red Hook Lane, Block 00154, Lot(s) 7501, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow the operation of a Physical Culture Establishment (Rumble Fitness) located in a portion of the cellar and first floor of an existing building contrary to ZR §32-10. C6-4.5 (Downtown Brooklyn Special District. C6-4.5 (DB) district.

2019-255-A

621 Alonzo Road, Block 15510, Lot(s) 0011, Borough of **Queens, Community Board: 4**. Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §35. R3X zoning district. R3X district.

DOCKETS

2019-256-BZ

1508 Avenue Z, Block 7460, Lot(s) 0003, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit the development of a 14-story mixed-use building, with ground floor commercial space (UG 6), ambulatory diagnostic facility community space (UG 4) and long-term care facilities (UG 3) contrary to floor area (§§ 33-12, 35-012, 23-155), building height (§§ 35-652, 35-012, and 23-664), and parking (§ 36-21). C4-2 zoning district. C4-2 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.

2019-257-BZ

179 East 79th Street, Block 1508, Lot(s) 0031, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super's apartment contrary to ZR §§12-10 & 23-152. C1-5/R10A & R10A zoning districts. R10A and R10A/C1-5 district.

2019-258-A

179 East 79th Street, Block 1508, Lot(s) 0031, Borough of **Manhattan, Community Board: 8**. Request to permit a 390 square foot enlargement of an existing super's apartment contrary Multiple Dwelling Law (MDL) and Housing and Maintenance Code (HMC). C1-5/R10A & R10A zoning districts. R10A and R10A/C1-5 district.

2019-259-BZY

23 East 39th Street, Block 00869, Lot(s) 0025, Borough of **Manhattan, Community Board: 6**. Application filed pursuant to (§11-332) to a building permit issued for, and extend the time to complete construction of, a twenty-seven-story hotel building. C5-3 zoning district. C5-3 district.

2019-260-BZ

233 East 34th Street, Block 00915, Lot(s) 0021, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Row House) located in a portion of the first floor and cellar of an existing building contrary ZR §32-10. C1-9A zoning district. C1-9A district.

2019-261-BZ

960 East 23rd Street, Block 7586, Lot(s) 0071, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (FAR and open space ration) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

CALENDAR

REGULAR MEETING OCTOBER 3, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, October 3, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.
PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.
COMMUNITY BOARD #13Q

1715-61-BZ

APPLICANT – Michael H. Choi, Esq., for Kun Kwon Kim and Won Kil Kim, owners.
SUBJECT – Application April 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a dry-cleaning establishment (UG 6A) which expired on June 5, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on September 14, 2011; Waiver of the Board's Rules. R3X zoning district.
PREMISES AFFECTED – 129-02 Guy Brewer Boulevard, Block 12276, Lot 59, Borough of Queens.
COMMUNITY BOARD # 12Q

157-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 2856 Astoria LLC, owner; TSI Astoria LLC dba New York Sports Club, lessee.
SUBJECT – Application April 12, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) on the first and second floor of a three-story commercial building which expired on February 27, 2017; Waiver of the Rules. C4-2A and C2-2/R6 zoning district.
PREMISES AFFECTED – 28-56 Steinway Street, Block 662, Block 41, Borough of Queens.
COMMUNITY BOARD #1Q

55-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Baker Tripi Realty Corporation, owner; Brendan's Service Station, lessee.
SUBJECT – Application February 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Establishment (UG 16B) which expired on September 23, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on March 15, 2010; Waiver of the Board's Rules. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 76-36 164th Street, Block 6848, Lot 1, Borough of Queens.
COMMUNITY BOARD #8Q

2017-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 55 Washington Street LLC, owner; Gleason's Gym, lessee.
SUBJECT – Application August 12, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Gleason's Gym) which expired on October 31, 2018; Waiver of the Board's Rules. M1-2/R8A zoning district.
PREMISES AFFECTED – 55 Washington Street, Block 38, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #2BK

APPEALS CALENDAR

2018-102-A

APPLICANT – Sheldon Lobel, P.C., for K. Kurylo Corporation, owner.
SUBJECT – Application June 28, 2019 – To acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development, as issued originally on March 11, 2009 in connection with Permit No. 302156798-01-A1 in the then R6 zoning district. R6B zoning district.
PREMISES AFFECTED – 241 Grand Street, Block 2382, Lot 27, Borough of Brooklyn.
COMMUNITY BOARD #1BK

2019-19-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ashland Building LLC, owner.
SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.
PREMISES AFFECTED – 107 Manee Avenue, Block 6751, Lot 3260 (tent.) Borough of Staten Island.

CALENDAR

COMMUNITY BOARD #3SI

2019-43-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Abdulhay NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4132 Victory Boulevard, Block 2636, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

2019-44-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Travis SI NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4128 Victory Boulevard, Block 2636, Lot 41, Borough of Staten Island.

COMMUNITY BOARD #2SI

REGULAR MEETING OCTOBER 3, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 3, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2019-16-BZ

APPLICANT – Pryor Cashman LLP, for McDonald's Corp., owner.

SUBJECT – Application January 22, 2019 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald's) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts.

PREMISES AFFECTED – 250-01 Northern Boulevard, Block 8129, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

2019-31-BZ

APPLICANT – Goldman Harris LLC, for 513 West 26th Street, LLC, owner; The Wright Fit, lessee.

SUBJECT – Application February 8, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (The Wright Fit Performance Lab) to be located on the fourth and fifth floors of a five-story building contrary to ZR §42-10. M1-5 Special West Chelsea zoning district. and West Chelsea Historic District.

PREMISES AFFECTED – 525 West 26th Street, Block 698, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

2019-42-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-02 18th Avenue LLC, owner; Blink 18th Avenue Inc., lessee.

SUBJECT – Application March 5, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Blink Fitness) to be located on a portion of the 1st floor and second floors of an existing building contrary to ZR §32-10. C4-2 zoning district.

PREMISES AFFECTED – 6502 18th Avenue, Block 5553, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

2019-59-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1421 Webster Avenue, LLC, owner; Blink Webster Avenue Inc., lessee.

SUBJECT – Application March 19, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Blink Fitness) located on the first and second floor of a new commercial building contrary to ZR §32-10. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1417 Webster Avenue, Block 2887, Lot 142, Borough of Bronx.

COMMUNITY BOARD #4BX

2019-63-BZ

APPLICANT – Sheldon Lobel, P.C., for 120 West 72nd Street Holdings LLC, owner; EPOC UWS LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Orangetheory Fitness) located on a portion of the first-floor of an existing mixed-use commercial and residential building contrary to ZR §32-10. C4-6A zoning district (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 120 West 72nd Street, Block 1143, Lot 7505, Borough of Manhattan.

COMMUNITY BOARD #7M

CALENDAR

2019-79-BZ

APPLICANT – Pryor Cashman LLP, for JS 29 West LLC, Am29 West LLC, NN West LLC, MAHFAR 29 West LLC, et alia, owner; CorePower Yoga, lessee.

SUBJECT – Application April 25, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (CorePower Yoga) to be located on the first floor building contrary to ZR §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 29 West 30th Street, Block 832, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

PREMISES AFFECTED – 46-09 and 46-19 31st Avenue, Block 728, Lot 1 & 5, Borough of Queens.

COMMUNITY BOARD #1Q

Carlo Costanza, Executive Director

2017-21-BZ

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38th Street, Block 645, Lot 10, Borough of Queens.

COMMUNITY BOARD #1Q

2018-150-BZ

APPLICANT – Law Office of Lyra J. Altman, for Isaac Mizrahi, owner.

SUBJECT – Application September 18, 2018 – Variance (§72-21) to permit the enlargement of an existing one family home contrary to ZR §23-14 (FAR); ZR §23-143 (Lot Coverage); ZR §23-161(b) (Side Yard); ZR §23-461(c) (less than required open area between buildings); and ZR §23-47 (Rear Yard). R4 zoning district.

PREMISES AFFECTED – 2215 Homecrest Avenue, Block 7373, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M. for postponed hearing.

2018-172-BZ

APPLICANT – Barak A. Wrobel, for The Trustees of the Estate Belonging to the Diocese of Long Island, owner; Ali Forney Center, Inc., lessee.

SUBJECT – Application November 1, 2018 – Variance (§72-21) to permit the development of multiple dwelling residence comprising of 21 units of Permanent Supportive Housing contrary to ZR §23-142 (open space); ZR §§23-22, 23-24 and 24-20 (maximum number of dwelling units); ZR §23-45 (front yards); ZR §24-35 (side yards); ZR §23-631(d) (maximum building heights); ZR §23-632(b) (side yard setbacks) and ZR §23-841 (outer court dimensions). R5 zoning district.

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 10, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 12, 2018, acting on New Building Application No. 421583904, reads in pertinent part:

“Proposed amendment to the automotive service is contrary to previous approval under BSA Cal. No. 539-66-BZ and must therefore be referred back to the Board of Standards and Appeals;” and

WHEREAS, this is an application for an amendment of a variance, previously granted by the Board pursuant to ZR § 72-21, which permitted the use of the site as an automotive service station with accessory uses; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, with continued hearings on February 5, 2019, April 9, 2019, June 25, 2019, and September 10, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection formed by Fresh Meadow Lane, 64th Avenue and Horace Harding

Expressway, in an R4 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 171 feet of frontage along Fresh Meadow Lane, 82 feet of frontage along 64th Avenue, 23,858 square feet of lot area and is occupied by an existing one- (1) story automotive service station building with fuel pumps, automotive repair and laundry and accessory sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 4, 1962, when, under BSA Calendar Number 496-62-BZ, the Board granted a variance, pursuant to ZR § 11-412, to permit the erection of a one- (1) story enlargement to an existing gasoline service station and the rearrangement of the pump islands on Fresh Meadow Lane, with permitted accessory uses, on condition that the work conform to drawings filed with the application; all laws, rules and regulations applicable be complied with; and, permit be obtained, work completed and a certificate of occupancy obtained within one (1) year, by December 4, 1963; and

WHEREAS, on September 20, 1966, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the reconstruction and maintenance of an automotive service station with accessory uses, and to include the additional use of automobile car laundry and a diagnostic center, on condition that the work be done in accordance with drawings filed with the application; all other laws, rules and regulations applicable be complied with; and, a permit be obtained, work done and a certificate of occupancy obtained within one (1) year, by September 20, 1967; and

WHEREAS, on January 16, 1968, under the subject calendar number, the Board waived its Rules of Procedure and amended the variance to extend the time to obtain a certificate of occupancy for three (3) months, by April 16, 1968; and

WHEREAS, on November 25, 1986, under the subject calendar number, the Board further amended the variance, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 858-85-A, to permit the erection of two (2) new 20-foot by 24-foot canopies and one (1) 20-foot by 38-foot canopy over existing gasoline pump islands with new installed self-serve pumps; to eliminate one (1) of the existing gasoline pump islands; to change the office area of the accessory building to an attendant's office and to eliminate the existing attendant's booth, all on condition that the premises conform to revised drawings filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; there be parking on the station for a maximum of three (3) vehicles for employees' vehicles only and eight (8) spaces for vehicles awaiting repair; the station shall be maintained clean and free of debris at all times; substantial construction be completed within one (1) year, by November 25, 1987; and, other than as amended the resolution be complied with in all respects; and

MINUTES

WHEREAS, on November 25, 1986, under BSA Cal. No. 858-85-A, the Board granted an application to permit the use of self-service gasoline pumps at the subject site on condition that (1) the permit to operate the station be for a term expiring on November 25, 1991; (2) a trained attendant who possesses a certificate of fitness, as per Section C 19-73.0(b)(2) of the Fire Prevention Code, be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation; (3) it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area or the fuel operation; (4) it be the attendant's duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; (5) signs reading "NO SMOKING," "STOP YOUR ENGINE", "IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; (6) portable fire extinguishers be provided and, in type, quantity and location be acceptable to the Fire Commissioner; (7) all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the testing laboratory upon which the approval is based; (8) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; (9) the installation and use of coin-operated dispensing devices for fuel be prohibited; (10) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system, maintained in a proper operating condition at all times; (11) all controls, devices, fire suppression systems and fire fighting equipment be maintained in good operating order at all times; (12) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (13) all dispensing nozzles be of the automatic closing type without hold open latches; (14) a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, and said instructions shall be at the direction of the Fire Commissioner; (15) the dispensing areas, at all times, be well lit for complete visual control; (16) all conditions set forth in the resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of motor vehicles outside of designated areas; (18) mirrors be provided which ensure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches shall be provided which actuate the fire suppression system and electronically disconnect the pumps, and the switches be located adjacent to each other and within five (5) feet of the console which

controls the self-service operation; (20) the gasoline station be operated in such a manner which minimizes traffic conditions; (21) the windows and the glass panels of the control booth shall remain clear and unobstructed at all times; and on further condition that the building equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within in one (1) year, by November 25, 1987; and that all applicable laws, rules and regulations be complied with; and

WHEREAS, the applicant also seeks an amendment to permit the reconstruction of the site to permit an accessory convenience store, in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99, in addition to the elimination of the prior approved uses of automotive repair and laundry and the relocation and widening of curb cuts at the subject site; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the sales area of the accessory convenience store is 2,060 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (5,965 square feet); and

WHEREAS, over the course of hearings, the Board raised concern regarding the proposed widening of a curb cut located on 64th Avenue, the potential negative impact to area traffic and requested an expanded traffic study; and

WHEREAS, in response, the applicant provided, and subsequently revised, a traffic study to demonstrate sufficient circulation of the site; and

WHEREAS, by letter dated January 23, 2019, the Fire Department states that a review of their records indicates that the subject automotive service station is current with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical) system; and the Department has no objection to the subject application; and

WHEREAS, by letter dated August 20, 2019, the New York City Department of Transportation ("DOT") states that, based on the traffic levels of service analysis conducted for the weekday a.m. and p.m. peak hours at two (2) intersections at the subject site, no significant impacts are identified at the study locations; the applicant will be responsible for all capital improvements including the closure of the two (2) existing curb cuts along the south side of 64th Avenue and reconstructing all sidewalks along the site frontage with full-height curb (i.e., a seven- (7) inch curb reveal); the applicant will submit all of the required drawings as per the American Association of State Highway and Transportation Officials ("AASHTO") and DOT

MINUTES

specifications and requirements for DOT review and approval; and, that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, sidewalk and signage during the preliminary and final design phases; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, issued on December 4, 1962 under BSA Cal. No. 496-62-BZ, as amended through under the subject calendar number, so that as amended this portion of the resolution shall read: “to *permit* the reconstruction of the site to permit the addition of an accessory convenience store and site modifications; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 1, 2019”-Nine (9) sheets; and *on further condition*:

THAT as required by DOT, the applicant shall be responsible for all capital improvements including the closure of the two (2) existing curb cuts along the south side of 64th Avenue and reconstructing all sidewalks along the site frontage with full-height curb (i.e., a seven- (7) inch curb reveal); submit all of the required drawings as per the American Association of State Highway and Transportation Officials (“AASHTO”) and New York City Department of Transportation (“DOT”) specifications and requirements for DOT review and approval; and, DOT shall participate in the review process relating to all future modifications to geometric alignment, curb cuts, sidewalk and signage during the preliminary and final design phases;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 539-66-BZ”), shall be obtained within four (4) years, by September 10, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 10, 2019.

130-88-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.

SUBJECT – Application September 25, 2018 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) which expires on January 29, 2019. C2-2/R4 zoning district.

PREMISES AFFECTED – 3602 Snyder Avenue, Block 4907, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-211, which permitted the use of the site as automotive repair and accessory convenience store, and expired on January 29, 2019; and

WHEREAS, a public hearing was held on this application on March 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on September 10, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Snyder Avenue and Brooklyn Avenue, in an R4 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 96 feet of frontage along Snyder Avenue, 217 feet of frontage along Brooklyn Avenue, 20,940 square feet of lot area and is occupied by an automotive service station with one (1) story accessory building with vehicle repair, office and storage; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 24, 1989, when, under the subject calendar number, the Board granted a special permit to permit the replacement of an existing gasoline service station and parking garage with a new automotive service station on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term be limited to a term of ten (10) years, to expire on January 24, 1999; the hours of operation for the lubrication be limited to 6:00 a.m. to 7:00 p.m., Monday through Saturday; a woven wire fence, 5’-6” in height, be erected on a six- (6) inch high concrete curb along the east and south lot lines and such fence be at least 50 percent opaque; street trees be provided in accordance with the

MINUTES

drawings and be maintained adequately at all times and replaced when necessary; signs comply with ZR § 73-211(e)(1); the conditions appear on the certificate of occupancy; the Department of Buildings ("DOB") issue no permits for a period of 31 days from the date of this resolution; the development, as approved, be subject to verification by the DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and all other relevant laws under the jurisdiction of the Department; and substantial construction be completed by January 24, 1993; and

WHEREAS, on January 24, 1989, under BSA Cal. No. 131-88-A, the Board granted an application to permit the use of self-service gasoline pumps at the subject site on condition that (1) the permit to operate the station be for a term of five (5) years, expiring on January 24, 1994; (2) a trained attendant who possesses a certificate of fitness, as per Section C 19-73.0(b)(2) of the Fire Prevention Code, be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation and be located in an enclosure separated from all other activities by partitions not less than seven (7) feet in height; (3) it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area or the fuel operation; (4) it be the attendant's duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; (5) signs reading "NO SMOKING," "STOP YOUR ENGINE", "IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; (6) portable fire extinguishers be provided and, in type, quantity and location be acceptable to the Fire Commissioner; (7) all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the testing laboratory upon which the approval is based; (8) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump and the gauges for the tanks serving the fire suppression system be positioned so as to be easily readable; (9) the installation and use of coin-operated dispensing devices for fuel be prohibited; (10) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system, maintained in a proper operating condition at all times; (11) all controls, devices, fire suppression systems and fire fighting equipment be maintained in good operating order at all times; (12) a maintenance log be kept on the premises as per direction of the Fire Commissioner; (13) all dispensing nozzles be of the automatic closing type without hold open latches; (14) a list

of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, and said instructions shall be at the direction of the Fire Commissioner; (15) the dispensing areas, at all times, be well lit for complete visual control; (16) all conditions set forth in the resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of motor vehicles outside of designated areas; (18) mirrors be provided which ensure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; (19) manual switches shall be provided which actuate the fire suppression system and electronically disconnect the pumps, and the switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; (20) the gasoline station be operated in such a manner which minimizes traffic conditions; (21) the windows and the glass panels of the control booth shall remain clear and unobstructed at all times; and on further condition that the building equipment, devices and controls substantially conform to drawings filed with the application; substantial construction be completed within in one (1) year, by January 24, 1990; and that all applicable laws, rules and regulations be complied with; and

WHEREAS, on October 12, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for ten (10) years, to expire on January 24, 2009, on condition that the conditions appear on the certificate of occupancy; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 12, 2000; and

WHEREAS, on May 14, 2002, under the subject calendar number, the Board further amended the resolution to extend the time to obtain a certificate of occupancy for three (3) years, by October 12, 2003, on condition that the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on June 4, 2013, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten (10) years, to expire January 24, 2019, and to grant an extension of time to obtain a certificate of occupancy, to June 4, 2014, on condition that all use and operations substantially conform to drawings filed with the application; the conditions appear on the certificate of occupancy; all conditions from the prior resolution not specifically waived by the Board remain in effect; and, the

MINUTES

Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term having expired, the applicant now seeks the subject relief; and

WHEREAS, the applicant represents that there have been no changes to the site, the station operates seven (7) days a week, 24 hours per day, and the automotive repair bays are open from Monday to Saturday, 8:00 a.m. to 7:00 p.m., and closed on Sundays; and

WHEREAS, at hearing, the Board raised concerns regarding the maintenance of landscaping at the subject site and the presence of excessive light levels on adjoining properties; and

WHEREAS, in response, the applicant submitted revised plans demonstrating sufficient landscaping with bollards to protect the planted areas, demonstrated the presence of no light spillover from the subject site to adjoining properties, and provided pictures of the site planting; and

WHEREAS, by letter dated March 1, 2019, the Fire Department states that a review of their records indicates that the subject automotive service station is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and fire suppression (dry-chemical) system, and the Fire Department has no objection or additional comments; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated , as amended through June 4, 2013, so that as amended this portion of the resolution shall read: “to *permit* extension of term of 10 years, expiring January 29, 2029; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received September 10, 2019”-Ten (10) sheets; and *on further condition*:

THAT all landscaping, paving and fencing shall be maintained in first-rate condition, as per BSA-approved plans, and shall be repaired or replaced as necessary;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti shall be removed immediately;

THAT lighting shall be directed down and away from adjacent properties;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 130-88-BZ”), shall be obtained within one (1) year, by September 10,

2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 10, 2019.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corp., owner; Quick Stop Auto Repair Inc., lessee.

SUBJECT – Application March 9, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of an automotive repair facility and auto sales (Use Group 16B) which expired on November 29, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on July 20, 2010; Waiver of the Board’s Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, Block 9792, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

MINUTES

APPEALS CALENDAR

140-14-A

APPLICANT – Eric Palatnik, P.C., RBM NY 1016 LLC, owner.

SUBJECT – Application April 22, 2019 – Extension of time to complete construction of and obtain a Certificate of Occupancy for a five-story mixed residential and commercial building under the common law and Vested Rights under the previous C4-3 zoning. R5 zoning district. PREMISES AFFECTED – 1016 East 13th Street, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for the renewal of building permits associated with a previously granted common law vested rights application, which reinstated Department of Buildings (“DOB”) Permit No. 302056343-01-NB and all related permits necessary to complete construction for a period that expired on March 31, 2019; and

WHEREAS, a public hearing was held on this application on September 10, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding area; and

WHEREAS, the subject site is located on the west side of East 13th Street, between Avenue J and Avenue K, within an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 13th Street, 100 feet of depth, and 4,000 square feet of lot area; and

WHEREAS, the applicant proposes to develop the site with a five- (5) story mixed-use residential and community facility building (the “Building”), with 10,778 square feet of floor area (2.69 floor area ratio (“FAR”)) (8,600 square feet of residential floor area (2.15 FAR) and 2,178 square feet of community facility floor area (0.54 FAR)), eight (8) dwelling units and no accessory parking spaces; and

WHEREAS, the site was formerly located within a C4-3 zoning district; and

WHEREAS, the applicant states that Permit No. 302056343-01-NB, the new building permit authorizing construction of the Building in accordance with C4-3 zoning district regulations (the “Permit”), was issued by DOB on December 29, 2005, and all excavation and foundation wall construction was completed prior to April 5, 2006; and

WHEREAS, on April 5, 2006 (the “Enactment Date”), the City Council voted to adopt the Midwood Rezoning

amendment (C 060130 ZMK), which changed the zoning for the subject premises from a C4-3 zoning district to an R5 zoning district; and

WHEREAS, while the completion of 100 percent of the Building’s foundations vested the project as-of-right under ZR § 11-331, due to financial hardship, the applicant did not complete construction within two (2) years and obtain certificates of occupancy for the Buildings, as required by ZR § 11-332, and the Permit lapsed by operation of law; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 2015, when, under the subject calendar number, the Board granted an application recognizing a common law vested right to continue construction of the Building, reinstated all of the permits necessary to complete construction of the Building and granted an extension of time to complete construction and obtain a certificate of occupancy for a term of four (4) years, which expired March 31, 2019; and

WHEREAS, however, as of March 31, 2019, construction was not completed and a certificate of occupancy had not been issued; therefore, on that date, the previously reinstated Permit lapsed again by operation of law; and

WHEREAS, accordingly, the applicant seeks further renewal of building permits associated with the previously granted common law vested rights application; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 AD 2d 10 (2d Dept 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 AD 2d 308 (2d Dept 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’”. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as noted above, the applicant obtained a permit to construct the Building and performed certain work prior to the Enactment Date; and

WHEREAS, specifically, the applicant states that the work it performed constitutes substantial construction, in that, prior to the Enactment Date, it constructed 100 percent of the foundation, completed all footings and foundation

MINUTES

walls, and constructed the elevator pit in the proposed cellar and, since the Board's 2015 approval, substantial construction progress has been made to complete the Building; and

WHEREAS, the applicant represents that the total expenditure paid toward the construction of the Building prior to the Enactment Date is \$296,408 (\$236,612 in hard costs and \$59,796 in soft costs), or approximately 15 percent, out of the \$1,920,000 cost to complete, an additional \$51,356 has been expended, including \$49,131 in soft costs, since the Enactment Date, and 95 percent of the development of the subject site was completed by March 31, 2019; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant additionally represents that serious loss would occur absent an extension of time to complete construction because at the subject site, pursuant to R5 zoning district regulations, two (2) side yards would be required and, as such, the building would require complete demolition to comply with such requirement; and

WHEREAS, thus, the applicant states that it would suffer a serious loss if the site was required to comply with the R5 district regulations; and

WHEREAS, the Board agrees that complying with the R5 district regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

WHEREAS, based upon its review of the record, the Board finds that a one (1) year renewal of building permits lawfully issued before the Enactment Date is appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 302056343-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for one (1) year from the date of this grant."

(DOB Application No. 302056343-01-NB)

Adopted by the Board of Standards and Appeals, September 10, 2019.

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 620A, 620B, 620C Sharrots Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE THE GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings ("DOB"), dated December 8, 2016, acting on New Building Application Nos. 520272534, 520272543 and 520272552, each read in pertinent part:

"GCL 36, BC 502.1: The street giving access to proposed building is not duly place don the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code"; and

WHEREAS, this is an application under General City Law ("GCL") § 36 to permit construction of three (3) buildings that do not front on a mapped street; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, with continued hearings on September 13, 2018, June 11, 2019, and September 10, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Sharrots Road, between Arthur Kill Road and Brienna Court, in an M1-1 zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site is an irregularly shaped lot with approximately 100 feet of frontage along Sharrots Road, 23,727 square feet of lot area and is currently vacant; and

WHEREAS, the site is located approximately 100 feet west of the intersection of Sharrots Road and Arthur Kill

MINUTES

Road, a mapped street; and

WHEREAS, Sharrotts Road has a width of approximately 12 feet at the subject site and is accessible from Arthur Kill Road, a mapped street paved to a width of approximately 80 feet; and

WHEREAS, by correspondence dated November 14, 2017, the Office of the Borough President indicates that Sharrotts Road is paved to a width between 12 feet and 33 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated January 29, 1996, as in-use at a width of 20 feet to 48 feet; and

WHEREAS, the applicant proposes to develop the site with three (3) buildings accessed via Sharrotts Road, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant proposes to develop 620A and 620B Sharrotts Road each with a retail and office building, and 620C Sharrotts Road with a warehouse building, all of which will be accessed by a proposed 29-foot wide curb cut; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district including those provisions relating to use, lot area, lot width, floor area, open space, wall height, total height, front and side yard setbacks, parking, landscaping and curb cuts; and

WHEREAS, by letter dated May 4, 2018, the New York City Department of Environmental Protection (“DEP”) states that there is an existing eight- (8) inch diameter water main in Sharrotts Road at the above referenced location; Storm Water and Sanitary Drainage Management Plan for South Richmond, Clay Pit Ponds Park Watershed, Sheet 5 of 7, revised dated May 12, 2005, shows future ten- (10) inch diameter sanitary and 15-inch diameter storm sewers in Sharrotts Road west of Arthur Kill Road; the applicant submitted a copy of the recorded Declaration of Easement and Maintenance for the Sharrotts Road Property Owners Association (“POA”); the owners/members of the Sharrotts Road POA will be responsible for the maintenance of the roadway and the water lines; the applicant submitted a “proposed storm water and sanitary disposal” plan, prepared by Richard W. Dailey, P.E., dated April 20, 2018; applicant must submit a Site Connection Proposal (“SCP”), showing the calculations for sanitary and storm discharge for certification; the internal sanitary and storm drains will be maintained by the POA; the applicant must submit an internal water main plan showing connection to the City water main; and, the proposed internal sanitary and storm drains and water mains in the fire access road and in Sharrotts Road will be maintained by the owners/members of the POA, and will not be maintained by the City of New York; and

WHEREAS, by letter dated August 23, 2018, DEP states that the applicant did not comply with the May 4, 2018, DEP letter and added that DEP requires the applicant submit a copy of the certified Site/House Connection Proposal application, showing the method of disposing

sanitary and storm discharge from the proposed enlargement, and approved internal water main plan showing connection to the City water main; the applicant must submit a copy of the final map of the City of New York and a copy of the corporation counsel opinion (“CCO”); it is anticipated that the proposed sanitary and storm connections and available water connection will be maintained by the owners, and will not be maintained by the City of New York; and

WHEREAS, by letter dated May 30, 2019, DEP added that no existing water mains or existing or future sewers are crossing the existing privately owned and unmapped lot number 40; and, the applicant must submit a plan showing the available water for the proposed development; and

WHEREAS, by letter dated August 9, 2019, DEP concluded that the proposed sanitary and storm will be discharged as per the self-certified Site Connection Proposal (SCP) SI-010/19SC; water connections will be connected to the Internal Water Main# IWR-12/19; it is anticipated that the water connections and the internal water main, connected to the eight- (8) inch diameter City water main in Sharrotts Road, and the proposed sanitary and storm discharge will be maintained by the owners and will not be maintained by the City of New York; and, based on the above, DEP has no objections to the subject application; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to increase the paved width of Sharrotts Road to approximately 28 feet directly in front of the subject site was filed with the New York City Departments of Buildings; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, by letter dated August 2, 2017, the Fire Department states that their Bureau of Operations has no further objections to the warehouse structure indicated as 620C Sharrotts Road located on the southwest portion of the lot, provided all areas of those structures are fully sprinklered; and, the Fire Department has no objection to the two (2) office/retail structures indicated as 620A & 620B Sharrotts Road located on the north portion of the lot, provided all areas of those structures are fully sprinklered; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decisions of the Department of Buildings, under the powers vested in the Board by Section 36 of the General City Law; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received September 10, 2019”-One (1) sheet; and *on further condition*:

THAT the applicant shall comply with the requirements of the New York City Department of Environmental Protection approval—for an 8-inch by 6-inch

MINUTES

wet connection (W.C.) on the 8-inch City water main in Sharrotts Road and a corresponding 8-inch internal water main, subject to the NYC Department of Buildings approval— which is valid for a two (2) year period, until July 26, 2021;

THAT the internal water main and connections to such main shall be installed only in accordance with RCNY, Title 15, Chapter 20, and each connection must be filled under a separate water service application following completion of the internal water main;

THAT valid permits issued to the Licensed Plumber must be on the worksite;

THAT approval for a water meter and meter location must be obtained from the Bureau of Customer Services;

THAT an approval for Backflow Prevention Assembly and a Vault must be obtained from Cross Connection Control Unit prior to approval of a permit application;

THAT water connections and the internal water main, connected to the eight- (8) inch diameter City water main in Sharrotts Road, and the proposed sanitary and storm discharge will be maintained by the owners and will not be maintained by the City of New York;

THAT the above conditions shall appear on the certificates of occupancy;

THAT certificates of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-5-A thru 2017-7-A”), shall be obtained within four (4) years, by September 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

2019-45-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application January 31, 2019 – Appeal of the DOB interpretation (dated 1/31/2019) that motor freight station for regulated medical waste use at the premises constitutes a UG 18 use pursuant to ZR § 42-15 and seeks the Board’s confirmation that such use constitutes a UG 16 use pursuant to ZR § 32-25.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Appeal granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 29, 2019, acting on ZRD1 Control No. 45305 (the “Determination”), reads in pertinent part:

The applicant’s request that the Department of Buildings (the “Department”) determine that the regulated medical waste (“RMW”) transfer facility at 100-02 Farragut Rd., BK, is a Use Group (“UG”) 16(D) motor freight station pursuant to Zoning Resolution (“ZR”) § 32-25 is hereby DENIED.

Pursuant to ZR § 42-15, “Use Group 18 consists primarily of industrial uses which . . . involve considerable . . . hazards to public health or safety . . . and . . . normally generate a great deal of traffic, both pedestrian and freight.” Here, the freight (i.e., the RMW) that will be transferred at the facility is governed by Title 15 of the New York State Environmental Conservation Law (“ECL”), Title 14 of the New York State Public Health Law (“PHL”) and the rules promulgated pursuant to those titles.

[. . .]

Considering the dangerous nature of such RMW and also its concentration at the facility, the proposed use “involve[s] considerable . . . hazards to public health or safety.” ZR § 42-15. Moreover, the applicant states that the facility’s New York State Department of Environmental Conservation permit allows “35 truck trips per day.” Such a volume of truck trips constitutes “a great deal of [freight] traffic.” ZR § 42-15. Therefore, the proposed RMW transfer facility meets both criteria of a UG 18 use as set forth in ZR § 42-15 and is within UG 18(B), “storage or miscellaneous uses, open or enclosed.”

In conclusion, because the RMW transfer facility is a UG 18 use and such uses are not allowed in

MINUTES

C8-1 zoning districts (pursuant to ZR § 42-15), job no. 321114450 is denied. In light of the First Deputy Commissioner’s prior ZRD1 (included by applicant in its Exhibit 2) regarding substantially the same issue, this determination by the Department may be appealed directly to the Board of Standards and Appeals;” and

WHEREAS, this is an appeal for interpretation, under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought by owner of the subject site, which includes the operation of a regulated medical waste (“RMW”) transfer facility (the “Appellant”), alleging errors in the Determination by DOB, dated January 29, 2019, that a RMW transfer facility is a Use Group (“UG”) 18 use, as defined in ZR § 42-15; and

WHEREAS, ZR § 32-25 reads:

“Use Group 16

C8

Use Group 16 consists of automotive and other necessary semi-industrial uses which:

- (1) are required widely throughout the city; and
- (2) involve offensive noise, vibration, smoke, dust, or other particulate matter, odorous matter, heat, humidity, glare or other objectionable influences, making such uses incompatible with residential uses and other commercial uses.

[. . .]

D. Heavy Service, Wholesale, or Storage Establishments

[. . .]

Trucking terminals or motor freight stations, limited to 20,000 square feet of lot area per establishment [PRC-G]

[. . .]

WHEREAS, ZR § 42-15 reads in pertinent part:

“Use Group 18

M3

Use Group 18 consists primarily of industrial uses which:

- (1) either involve considerable danger of fire, explosion or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high performance standards with respect to the emission of objectionable influences; and
- (2) normally generate a great deal of traffic, both pedestrian and freight.

A. Manufacturing establishments

[. . .]

Radioactive waste disposal services involving the handling or storage of radioactive waste

[. . .]

B. Storage or miscellaneous uses, open or enclosed;” and

WHEREAS, DOB Technical Policy and Procedure Notice # 2 of 1991, dated March 28, 1991, reads in pertinent part:

“For the purposes of this Notice, a Solid Waste Transfer Station shall be defined as a building wherein solid waste is received for the purpose of subsequent transfer to another location or facility. Reduction in volume, baling or sorting may occur at a Transfer Station. Transfer Stations shall be classified in Use Group 18 of the Zoning Resolution and in Occupancy Group D-2 of the Building Code;” and

WHEREAS, the subject site is located on the southeast corner of Farragut Road and East 100th Street, in a C8-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 13,235 square feet of lot area, and is occupied by an existing one-story building with approximately 6,000 square feet of floor area, of which approximately 1,334 square feet is used to receive, ship and weigh packaged RMW before the packages are delivered to a final destination where the RMW is disposed; and

WHEREAS, the Department of Buildings issued the Determination on January 29, 2019, concluding that the subject RMW transfer station constitutes a UG 18 use and, as such, is not permitted as of right in the subject C8-1 zoning district; and

WHEREAS, the Appellant commenced this appeal on March 18, 2019, and seeks a determination that the RMW transfer facility does not constitute a UG 18 use; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, with a continued hearing on July 16, 2019, and then to decision on September 10, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the issue before the Board is whether a regulated medical waste transfer station is a UG 18 use, as defined by ZR § 42-15; and

Discussion

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” the Zoning Resolution; and Whereas, the Board has reviewed and considered—but need not follow—DOB’s interpretation of the Zoning Resolution in rendering the Board’s own decision in this appeal, and the standard of review in this appeal is *de novo*; and

WHEREAS, as discussed herein, and based on its review of the Zoning Resolution Use Group classifications and their prefatory language, the operation at the subject site, state regulations relating to the handling of medical waste, and the arguments presented by the Appellant and by DOB, the Board finds that the subject RMW transfer station

MINUTES

is not a UG 18 use; and

WHEREAS, UG 18 uses, as defined by ZR § 42-15, “either involve considerable danger of fire, explosion or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high performance standards with respect to the emission of objectionable influences;” and

WHEREAS, the DOB states that, given the mere possibility of imperfect operation of the RMW transfer facility, the potential for harm—a possible leak or spill of the sealed RMW resulting in an infectious disease contamination risk—establishes that the use involves considerable danger; and

WHEREAS, the subject site operates pursuant to a permit by the New York State Department of Environmental Conservation (“DEC”), pursuant to 6 NYCRR Parts 360-366 and 369, which sets controls and limits on the operation of the site with respect to the amount, type and manner of handling RMW; and

WHEREAS, the subject site is occupied by two separate entities, a RMW transfer station (1,334 square feet of floor area) and an ambulette minor repair facility (2,694 square feet of floor area) with accessory offices (972 square feet of floor area); and

WHEREAS, there is no mechanical equipment associated with the RMW transfer station except handcars, rollers, scales and monitors, and equipment typically used to transfer and weigh packages; normal operating hours are Monday through Friday from 7:00 a.m. to 7:00 p.m.; no processing, treatment, or disposal of RMW occurs at the subject site and the RMW transfer facility’s operation is limited to receiving, shipping and weighing sealed packages of RMW before the packages are placed into truck trailers and removed from the site to be delivered to a final destination where the RMW is ultimately disposed; and

WHEREAS, the applicant additionally states that, in accordance with DEC regulations, the RMW is received and shipped in small, sealed, hard-sided containers, which are not opened or processed at the site, and there is no on-site treatment, sorting, bailing, processing, disposal, or compacting; and

WHEREAS, the use at the subject site does not generate or manufacture RMW and is distinguishable from an operation involved in the manufacture or generation of RMW, such as a solid waste management facility; and

WHEREAS, however, pursuant to ZR § 32-10, *et. seq.*, the uses permitted as-of-right in the subject C8-1 zoning district include, but are not limited to, uses that may involve the generation, handling, and processing of medical or biohazardous waste such as ambulatory diagnostic or treatment health care facilities, veterinary medicine for small animals, medical or dental laboratories for research or testing, animal hospitals, animal crematoriums, and human crematoriums; and

WHEREAS, the Board also notes that the RMW that is handled by operator of the transfer station is the type that may be generated by an individual in a household, at an

urgent care clinic or doctor office, at a college or university, or any location where medical staff or services are present; and

WHEREAS, the subject site receives a maximum of 330 tons of RMW per month that arrives to the facility, after the generator of the RMW has placed it in a puncture-proof bag or sealed container, and is stored at the subject site for a limited duration of time where it is thereafter placed onto another truck and taken elsewhere for treatment and disposal; and

WHEREAS, the subject site collects and organizes the unopened and sealed containers of RMW and there is no opening of the sealed containers, nor is there sorting or treatment of the RMW at the site; and

WHEREAS, the operation at the subject site is consistent with Use Group 16 uses, as the subject site operates as a business for the storage of RMW containers for collection and transportation, and, because RMW is a good transported in bulk by truck and for profit, a majority of the Board finds that the transferring RMW is an activity involving freight; and

WHEREAS, the operation at the site generates approximately 17 truck trips per day, but is permitted to generate 35 trips per day; and

WHEREAS, by comparison, the *City Environmental Quality Review Technical Manual* states that densities that result in fewer than 50 peak hour vehicle trips are unlikely to produce significant traffic impacts; and

WHEREAS, although DOB argues that there is serious danger involved in connection with the operation of the site, given the potential for contamination should the safety protocols and DEC regulatory procedures be violated, the Board does not find that the subject RMW transfer facility involves either considerable danger of fire, explosion, or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high performance standards with respect to the emission of objectionable influences, nor does the use normally generate a great deal of traffic, pedestrian or freight; and

WHEREAS, the operation of this RMW transfer station at the subject site is inconsistent with the prefatory language of ZR § 42-15, given that the site does not open, sort, treat, dispose of, nor generate medical waste, and is simply concerned with the transfer and transient storage of boxed or sealed items; and

Appellant’s Arguments

WHEREAS, the Appellant states that the RMW transfer station operation at the site is limited to the pick-up and transfer of sealed packages that arrive to and leave from the subject site in the same packaging, are never opened, and are simply weighed and stored until they are transferred to a truck trailer, then taken away to a disposal facility; and

WHEREAS, the Appellant argues that the use of the site, including the ambulette repair facility, operates as a motor freight station; and

WHEREAS, additionally, the Appellant states that the controls and required permitting of the operation at the site

MINUTES

by DEC ensures the RMW is maintained in sealed containers and is neither treated nor processed on-site and, as such, the potential hazards of the transportation of RMW does not involve the level of potential environmental and public health risks associated with UG 18 uses; and

WHEREAS, the Appellant represents that DEC also places regulations on the generation of RMW—including controls on the types of RMW for transfer and requirements for labeling, weighing, radioactive material testing, and sealing—which eliminate the risk of contamination before the RMW has arrived at the subject site; and

WHEREAS, the Appellant states that the operation is further distinguishable from a UG 18 solid waste transfer station, as defined in DOB Technical Policy and Procedure Notice # 2/91, in that the subject site does not perform reduction in volume, baling or sorting of RMW; and

WHEREAS, the Appellant represents that, with 17 truck trips per day, the site does not generate a great deal of traffic, as per ZR § 42-15, and argues that the site generates much less vehicular traffic than UG 16 uses including laundries, car washes, packing and crating establishments for all uses, and automotive uses, and, further, generates no pedestrian traffic; and

DOB's Position

WHEREAS, DOB maintains that the use at the subject site constitutes a UG 18 use in that it involves considerable danger and analogizes the operation to an explosives storage facility, which requires a permit from, and is regulated by, the New York City Fire Department; and

WHEREAS, DOB states that transfer stations and explosives storage facilities, when perfectly operated, pose no danger to the public, but, because of the danger to the public when not perfectly operated, are classified as UG 18 and argues, as such, that the potential of harm to the public due to the possibility of an accident at the RMW transfer facility establishes that the use involves considerable danger; and

WHEREAS, DOB points to the contents of the RMW and argues that an accident at the subject site would pose a risk of infectious disease contamination and threaten the health of the public; and

WHEREAS, DOB further argues that the subject operation is not a motor freight station and states that the use of specialized containers for solid waste does not transform a solid waste management facility into a motor freight station; and

WHEREAS, further, DOB states that unlike traditional freight, which is a thing transported for economic value, RMW, or waste generally, does not have value and cannot be considered as “freight”—the compensation is in the act of disposal and not the waste itself; and

Conclusion

WHEREAS, because the Board's determination is limited to the evidence in the record regarding the question of whether the subject RMW transfer station operation at the subject site constitutes a UG 18 use, it is unnecessary determine in this appeal which UG 16 use the operation in

question constitutes; and

WHEREAS, as discussed at hearing, in the absence of a text amendment to the Zoning Resolution, DOB could clarify the parameters of RMW transfer stations that would not be classified as a UG 18 use through the issuance of a Buildings Bulletin consistent with the Board's determination herein; and

WHEREAS, based on the foregoing, the Board finds that the subject RMW transfer facility does not constitute a UG 18 use.

Therefore, it is Resolved, that the Board of Standards and Appeals *grants* the appeal, and the decision of the Department of Buildings, dated January 29, 2019, acting on ZRD1 Control No. 45305, shall be and hereby is *reversed*.

Adopted by the Board of Standards and Appeals, September 10, 2019.

205-15-A thru 214-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129th Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130,131, 132, 133,134, 135,136, 137, 138, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 10, 2019, at 10 A.M., for decision, hearing closed.

2016-4302-A thru 2016-4326-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of twenty-five (25) single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 92 to 120 Cupidity Drive and 201 to 225 Avidita Place, Block 3019, Lot(s) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and Lot(s) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

MINUTES

2016-4355-A thru 2016-4462-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of 107 single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-465 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2017-107-A thru 2017-129-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications April 13, 2017 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application December 1, 2017 – Pursuant to § 645 of the New York City Charter, the Department of Buildings (the "Department") respectfully submits to the Board of Standards and Appeals (the "Board") this statement in support of its application to modify certificate of occupancy 321114450F dated September 1, 2015.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for adjourned hearing.

2019-51-A thru 2019-57-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Application March 19, 2019 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 119, 118, 117, 116, 115, 114, 113, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2019-89-A

APPLICANT – City Club of New York, for West 66th Sponsor LLC c/o Extell Development Co., owner.

SUBJECT – Application May 7, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for decision, hearing closed.

2019-94-A

APPLICANT – Landmark West, for West 66th Sponsor LLC c/o Paul Hastings LLP, owner.

SUBJECT – Application May 13, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7 and R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for decision, hearing closed.

MINUTES

ZONING CALENDAR

2019-34-BZ

CEQR #19-BSA-092M

APPLICANT – Jodi Stein, of Herrick, Feinstein, LLP, for The Reece School, owner.

SUBJECT – Application February 15, 2019 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) (*The Reese School*) contrary to ZR 24-522 (street wall). R7-2 zoning district.

PREMISES AFFECTED – 25-27 East 104th Street, Block 1610, Lot(s) 11 and 12, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 30, 2019, acting on Alteration Application No. 121188222, reads in pertinent part:

“Proposed height of street wall does not comply with ZR 24-522”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R7-2 zoning district, the enlargement of an existing school building that does not comply with zoning regulations for height and setback, contrary to ZR § 24-522; and

WHEREAS, this application has been brought on behalf of The Reece School (the “School”), a not-for-profit education corporation chartered by the New York State Board of Regents; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on September 10, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of East 104th Street, between Fifth Avenue and Madison Avenue, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 50 feet of frontage along East 104th Street, 101 feet of depth, 5,045 square feet of lot area and is occupied by a five-story, with cellar, community-facility building used as a school; and

WHEREAS, the applicant proposes to enlarge the existing building from 20,905 square feet of floor area (4.14 FAR) to 25,471 square feet of floor area (5.0 FAR) with a building height of 101’-2½” without setback; and

WHEREAS, the applicant states that, at the subject site, the maximum street wall height permitted is the lesser of six stories or 60 feet, after which a 20 foot setback is required with the remainder of the building subject to a sky exposure plane of 2.7 to 1 (vertical to horizontal) under ZR § 24-522; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, the Board acknowledges that the School, as an educational facility, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the School’s proposed enlargement is necessary to accommodate the School’s programmatic needs and that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant provided a comprehensive report on the School’s programmatic needs, demonstrating an enrollment of approximately 130 students, the necessity of small student-to-staff ratio in classrooms to provide a supportive and nurturing learning environment with separate spaces for individual and small-group instruction and activities with mandated services based on each student’s needs (including speech and language, counseling, occupational therapy, and physical therapy), and access to healthy-living and arts programs (including general science with horticulture, creative arts, physical education, and music); and

WHEREAS, the applicant notes that currently, in attempting to meet the School’s programmatic needs and enrollment, a library and a staff lounge have been converted into a classroom with occupational-therapy programs’ displacing related service providers from offices, relegating some educational services to hallways and corners of the gymnasium; and

WHEREAS, the applicant also submitted the School’s master schedule and architectural drawings evidencing the current utilization of each classroom and converted space throughout a typical week; and

WHEREAS, the applicant submits that an as-of-right enlargement would result in an additional five stories with a setback of 20 feet but a maximum building height of 122 feet, constraining floorplates within the enlargement to sizes

MINUTES

ranging from 2,054 square feet to 2,270 square feet; and

WHEREAS, the applicant provided architectural diagrams demonstrating that floorplates of these sizes would be inefficient—and would require constant movement between floors for students with disabilities—and would thereby fail to accommodate the School’s programmatic need to provide each student with an individualized education; and

WHEREAS, in sum, the applicant analyzed and detailed the deleterious effects that the School’s current facility as well as a complying building form have on the School’s programmatic needs based on the School’s educational mission and projected occupancy; and

WHEREAS, the applicant notes that the proposed enlargement alleviates these constraints by facilitating the needed creation of an enhanced occupational-therapy and physical-therapy support space, five additional classrooms, a music room, a tutoring room and offices for behavioral support specialists and clinicians; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School’s programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed enlargement reflects a modest increase in the massing of the existing building and would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, finding that the proposed educational use is consistent with the vibrant mix of uses in the vicinity—including community facilities, residences, and commercial uses; and

WHEREAS, the applicant states that the proposed enlargement is substantially shorter than an as-of-right building height, which is permitted to rise to 122 feet; and

WHEREAS, the applicant also notes that buildings in the vicinity range in height from five to 15 stories and submitted evidence demonstrating that the proposed enlargement is consistent with the surrounding area’s built environment; and

WHEREAS, by letter dated September 4, 2019, the Fire Department states that it has no objection to this application; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or

development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to accommodate the School’s programmatic needs by providing adequate floorplates that would not compromise the School’s program, as reflected above and in the School’s programmatic-needs report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-092M, dated February 19, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R7-2 zoning district, the enlargement of an existing school building that does not comply with zoning regulations for height and setback, contrary to ZR § 24-522; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received August 29, 2019”-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum building height of 101’-2½” without setback, as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2019-34-BZ”), shall be obtained within four (4) years, by August 6, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other

MINUTES

relevant laws under its jurisdiction regardless of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

17-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beach Front Estates LLC, owner.

SUBJECT – Application January 26, 2015 – Variance (72-21) to allow the construction of a four story residential building at the premises, located within an R4A zoning district.

PREMISES AFFECTED – 133 Beach 5th Street, Block 15609, Lot Tentative 40, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 10, 2019.

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 10, 2019.

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 10, 2019.

2018-116-BZ

CEQR #19-BSA-010K

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 14, 2018, acting on DOB Application No. 321771230, reads in pertinent part:

Proposed continuance of an automotive service station use with accessory uses in C2-2 in R3-2 zoning district contrary to ZR Section 32-35 and BSA Cal. No. 372-01-BZ and therefore requires a Special Permit by BSA pursuant to ZR Section 73-211; and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to legalize the operation of an automotive service station (Use Group (“UG”) 16B) with an accessory convenience store (UG 6) on a site located in an R3-2 (C2-2) zoning district; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with continued hearings on

MINUTES

April 9, 2019, May 7, 2019, May 21, 2019, and September 10, 2019, and then to decision on that date; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application on the following conditions: the term of the special permit be limited to ten (10) years; there be no open storage or parking of motor vehicles at the subject site; the premises be maintained free of graffiti and debris; the proposed accessory convenience store hours be limited to 5:30 a.m. to 12:00 a.m., daily; there be no sale of alcoholic beverages in the store; there be an eight- (8) foot high fence and six- (6) foot high evergreens that screen the perimeter of the site; the fences and gates be of legal and uniform height; there be no lubrication, repair or washing of cars at the premises; the automobile vacuums only be used from 9 a.m. to 9 p.m.; lighting be directed down and away from residential uses, and in accordance with BSA-approved plans; landscaping be provided and maintained in accordance with BSA-approved plans; a five- (5) foot high masonry wall with a three- (3) foot high solid fence on top along the western property line be provided; parking for (9) vehicles shall be provided in addition to the spaces at the pump island for the convenience store; the conditions appear on the certificate of occupancy; and, a new certificate of occupancy be obtained within one (1) year of the date of the resolution; and

WHEREAS, the Board was in receipt of one (1) form letter in support, and one (1) form letter in opposition to this application, citing concerns related to limited parking on the subject block; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southwest corner of Utica Avenue and Avenue L, in an R3-2 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along Utica Avenue, 100 feet of frontage along Avenue L, 10,000 square feet of lot area and is occupied by an existing automotive service station with an existing one- (1) story accessory convenience store (600 square feet of floor area); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 15, 1954, when, under BSA Cal. No. 928-53-BZ, the Board granted a variance, for a term of 15 years, to permit the premises to be occupied as a gasoline service station, substantially as proposed on plans filed with the application, on condition that complete working drawings be submitted for further consideration by the Board and imposition of conditions before same are filed with or acted on by the Borough Superintendent; such working drawings be filed within two (2) months, by August 15, 1954; and, all permits required be obtained and all work completed within one (1) year, by June 15, 1955; and

WHEREAS, on July 27, 1954, and December 14, 1954, under BSA Cal. No. 928-53-BZ, the Board accepted revised plans as being in substantial compliance with the June 1954 resolution; and

WHEREAS, on June 14, 1955, under BSA Cal. No. 928-53-BZ, the Board amended the resolution to extend the time to obtain permits and complete the work on condition that, in view of the statement by the applicant that plans have been approved by the Department of Housing and Buildings and work is nearing completion, all permits required and a certificate of occupancy be obtained and all work be completed within six (6) months, by December 14, 1955; and

WHEREAS, on March 5, 1957, under BSA Cal. No. 928-53-BZ, the Board further amended the resolution such that there may be installed two (2) additional gasoline storage tanks of approved type, as passed on by the borough superintendent acting on Gas Tank Applic. 3545, objection dated December 19, 1956, and as shown on plans filed with the application, making a total of ten (10) existing and two (2) additional tanks; and

WHEREAS, on July 15, 1969, under BSA Cal. No. 928-53-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on June 15, 1979, and to permit the accessory building to be altered as shown on plans filed with the application, on condition that the sidewalks in front of the premises be paved from building line to curb; the planting where shown on drawings be restored and maintained to comply with Section 25-66 of the Zoning Resolution; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on April 30, 1974, under BSA Cal. No. 928-53-BZ, the Board further amended the resolution by adding that the brick wall along the westerly lot line and the gasoline pumps substantially conform to revised plans filed with the application, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 2, 1979, under BSA Cal. No. 928-53-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on October 2, 1989, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 2, 1980; and

WHEREAS, on September 9, 1997, under BSA Cal. No. 94-97-BZ, the Board granted a special permit, pursuant to ZR § 73-211, to permit the construction and maintenance of a self-service automotive service station with accessory convenience store (Use Group 16) and no repairs, lubrication or car washing on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the special permit be limited to a term of 20 years, to expire on September 9, 2017; fencing and screening be maintained in accordance with BSA-approved plans; lighting be positioned down and away from the adjacent residential uses; signage be limited in accordance with BSA-approved plans; reservoir space for not less than five (5) waiting vehicles, in addition to spaces at the pumps, be maintained on the premises in accordance with BSA-approved plans; the conditions appear on the

MINUTES

certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 73-70, by September 9, 2001; and

WHEREAS, on April 16, 2002, under BSA Cal. No. 372-01-BZ, the Board granted a special permit, pursuant to ZR § 73-211, to permit the expansion and construction of a new automotive service station (Use Group 16), with an accessory convenience store, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term of the special permit be limited to ten (10) years, to expire on April 16, 2012; there be no open storage or parking of motor vehicles at the subject site; the premises be maintained free of graffiti and debris; the proposed accessory convenience store hours be limited to 5:30 a.m. to 12:00 a.m., daily; there be no sale of alcoholic beverages in the store; there be an eight (8) foot high fence and six- (6) foot high evergreens that screen the perimeter of the site; the fences and gates be of legal and uniform height; there be no lubrication, repair or washing of cars at the premises; the automobile vacuums only be used from 9 a.m. to 9 p.m.; lighting be directed down and away from residential uses, and in accordance with BSA-approved plans; landscaping be provided and maintained in accordance with BSA-approved plans; a five (5) foot high masonry wall with a three (3) foot high solid fence on top along the western property line be provided; parking for (9) vehicles be provided in addition to the spaces at the pump island for the convenience store; the conditions appear on the certificate of occupancy; and, a new certificate of occupancy be obtained within one (1) year of the date of the resolution, by April 16, 2003; and

WHEREAS, the applicant proposes to legalize an automotive service station (UG 16B) with six (6) fuel pumps and a one- (1) story accessory convenience store (UG 6) building, containing 600 square feet of floor area and space for at least five (5) reservoir spaces; and

WHEREAS, ZR § 73-211 reads as follows:

In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in *streets*¹), the Board of Standards and Appeals may permit *automotive service stations*, provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not located on an arterial highway or a major *street* has a maximum area of 15,000 square feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened, as the Board may prescribe, by either of the following methods:
 - (a) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years; or
 - (b) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
 - (a) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-*illuminated* or *illuminated non-flashing signs* with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
 - (b) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect *residential zoning lots* which are adjoining or across the *street*.

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, the Board confirms that the subject site is

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

located in an R3-2 (C2-2) zoning district that has a longer dimension of at least 375 feet; that the subject site has a minimum of 7,500 square feet of lot area; and, at 10,000 square feet, meets the maximum lot area restriction; and

WHEREAS, with regard to the conditions the Board is required to prescribe pursuant to ZR § 73-211, the applicant represents that the proposed automotive service station will not include facilities for lubrication, minor repairs or washing of automobiles but, instead, will utilize the accessory building as a UG 6 convenience store in accordance with Department of Buildings Technical Policy and Procedure Notice (“TPPN”) # 10/99, and that the site is proposed to provide one (1) ADA-compliant parking space, with space for five (5) reservoir spaces, in addition to those spaces available at the pumps; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the accessory retail use will be located on the same zoning lot as the automotive service station and within a completely enclosed building, and the proposed sales area of the accessory convenience store is 268 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (2,500 square feet); and

WHEREAS, in reference to vehicular movement on the site, the applicant submits that the entrances and exits have been planned so that at maximum operation, vehicular movement into or from the site will cause minimum obstruction on the surrounding streets or sidewalks, and the site is accessed by two (2) existing 25.2’-wide curb cuts on Utica Avenue and one (1) existing 26’-wide curb cut on Avenue L; and

WHEREAS, the applicant proposes maintain the westerly lot line of the site that is shared with residential use with a four (4) foot high masonry wall with three (3) foot fence on top and landscape the same with trees; and

WHEREAS, the applicant also proposes to provide six (6) illuminated signs, ranging in size from nine (9) square feet to 35.5 square feet, totaling 96.8 square feet, and three (3) non-illuminated signs, ranging in size from three (3) square feet to nine (9) square feet, all of which will comply with zoning regulations applicable in the underlying zoning district; and

WHEREAS, the Board finds that the applicant has submitted substantial evidence that the findings set forth in ZR § 73-211 have been met; and

WHEREAS, the applicant states that there are no proposed or existing capital projects along the subject site; and

WHEREAS, the Board finds that the subject proposal

will not interfere with a pending public improvement project; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the presence of two (2) vacuums at the subject site, the poor condition of the landscaping, and the presence of a car washing station at the subject site; and

WHEREAS, in response, the applicant provided photographs demonstrating replanted landscaping, one (1) vacuum removed from the site, and showing the car wash hose area adjacent to the vacuum and air pump at the Utica Avenue corner of the subject site and away from residential use; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, by letter dated January 5, 2019, the Fire Department states that a review of their records indicates that the subject site is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and fire suppression (dry-chemical) system; and the Bureau of Fire Prevention has no objection to the application; and

WHEREAS, at hearing, the Board raised concern with regard to the operator’s ability to prevent trucks and tractor-trailers from accessing the site from curb cuts not designed for truck maneuverability; and

WHEREAS, in response, the applicant stated that the operator maintains control of its delivery fleet, servicing the needs of the subject site, and will restrict the delivery of all fuel and store merchandise to be made through the designated truck access curb cut; 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”) Short Form, CEQR No. 19BSA010K, received October 4, 2018; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or, Construction; and

WHEREAS, the Board has determined that the operation of the automotive service station at the premises will not have a significant adverse impact on the environment; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings

MINUTES

pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, in light of the foregoing, the Board has determined that the requested special permit, legalizing the construction and maintenance of an automotive service station, is appropriate, subject to conditions set forth below.

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, 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 §§ 73-211 and 73-03 to legalize, in an R3-2 (C2-2) zoning district, the maintenance of an automotive service station (Use Group 16B) with an accessory convenience store (Use Group 6); *on condition* that all work shall substantial conform to drawings filed with this application marked "August 29, 2019"-Seven (7) sheets; and *on further condition*:

THAT the car wash operation shall cease at 12:00 a.m., midnight;

THAT the site grading of the car wash area shall be configured to ensure no water outflow from the site occurs on adjacent properties;

THAT all water within the site shall be directed into the floor drain, as shown on BSA-approved plans page Z-001, and be maintained in good operating condition at all times;

THAT the site shall remain free of debris and graffiti at all times;

THAT landscaping and fencing, as shown on the BSA-approved plans, shall be maintained in first-rate condition and replaced as needed;

THAT all lighting shall be directed down and away from adjoining properties;

THAT all signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-116-BZ"), shall be obtained within one (1) year, by September 10, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for adjourned hearing.

157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 17, 2019, at 10 A.M., for continued hearing.

2017-231-BZ

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

2017-233-BZ

APPLICANT – Sheldon Lobel, P.C., for 446-448 Park Realty Corp., owner.

SUBJECT – Application August 8, 2017 – Variance (§72-21) to allow for the development of six-story plus cellar (UG 2) residential building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 446-448 Park Avenue, Block 1898, Lot(s) 37 & 38, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January

MINUTES

14, 2020, at 10 A.M., for adjourned hearing.

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.

SUBJECT – Application August 17, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Block 4938, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

2017-270-BZ

APPLICANT – Edward Lauria, P.E., for Daniel Apice, owner.

SUBJECT – Application September 21, 2017 – Special Permit (§73-53) to permit the enlargement of an automotive body repair facility (UG 17B) contrary to ZR §43-121 (Maximum Permitted Floor Area). M1-1 zoning district.

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*CrossFit*) within an existing one store commercial building contrary to ZR §42-10 located in M1-4 zoning district.

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for adjourned hearing.

2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.

SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries. C4-4 zoning district.

PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for adjourned hearing.

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 104 DeGraw Street, Block 329, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 10, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2019-86-BZ

CEQR #19-BSA-127K

APPLICANT – Jay Goldstein, Esq., for Moti Zilber, owner.
SUBJECT – Application May 3, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio. R2 zoning district.

PREMISES AFFECTED – 2702 Avenue N, Block 7681, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 4, 2019, acting on Alteration Type I Application No. 321386317, reads in pertinent part:

1. “ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
 2. ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%”;
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) and open space ratio (“OSR”), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on September 10, 2019 after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form

letter in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Avenue N and East 27th Street, within an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along Avenue N, 100 feet of frontage along East 27th Street, 4,000 square feet of lot area and is occupied by an existing three- (3) story plus cellar single-family detached dwelling and existing garage; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only

MINUTES

be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a three- (3) story plus cellar detached building with 0.73 FAR (2,913 square feet of floor area), 100% OSR (2,932 square feet of open space), a front yard along Avenue N with a depth of 14'-11", a front yard along East 27th Street with a depth of 14 feet, and two (2) side yards with widths of 33 feet and 5'-6"; and

WHEREAS, the applicant proposes to horizontally enlarge the single-family detached residence resulting in a three- (3) story plus cellar single-family detached residence with 0.91 FAR (3,633 square feet of floor area), 74% OSR (2,672 square feet of open space), a front yard along Avenue N with a depth of 14'-11", a front yard along East 27th Street with a depth of 14 feet, and two (2) side yards with widths of 20 feet and five (5) feet; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted and a minimum of 150% OSR (3,000 square feet of open space) is required pursuant to ZR § 23-141; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,068 square feet to 1,328 square feet, the second floor from 1,068 square feet to 1,328 square feet, and the attic/third floor from 777 square feet to 978 square feet; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the

built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two- (2) family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 127 qualifying residences, 112 residences (88 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.28, and 14 residences have an FAR of 0.91 or greater; and

WHEREAS, the applicant submitted a lot coverage study demonstrating that, within the Study Area, 112 lots (88 percent) have 33 percent or greater lot coverage, consistent with the 33 percent lot coverage proposed at the subject site; and

WHEREAS, the applicant notes that the proposed enlargement includes a horizontal extension of the existing 14-foot front yard along East 27th Street and represents that, pursuant to a 1950 Sanborn Map including the subject site, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, argues that the front yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the Board takes no position as to the lawfulness of the existing front yard or any enlargement within the front yard, which cannot be waived under ZR § 73-622; and

WHEREAS, accordingly, DOB must ensure that any enlargement within the existing front yard complies with zoning regulations applicable to front yards; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-127K, dated May 8, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-

MINUTES

02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) and open space ratio (“OSR”), contrary to ZR § 23-141; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received September 10, 2019”-Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.91 FAR (3,633 square feet of floor area) and a minimum of 74 OSR (2,672 square feet of open space), as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No. 2019-86-BZ”), shall be obtained within four (4) years, by September 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

2019-87-BZ

CEQR #19-BSA-128K

APPLICANT – Jay Goldstein, Esq., for Everstone Realty LLC c/o Joseph Rosanel, owner.

SUBJECT – Application May 6, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area ratio and open space ratio). R2 zoning district.

PREMISES AFFECTED – 2624 Avenue M, Block 7662, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 5, 2019, acting on Alteration Type I Application No. 321387165, reads in pertinent part:

1. “ZR 23-141: The proposal will create a non-compliance with respect to Floor area Ratio (FAR) - The maximum permitted #floor area ratio# shall be 0.50. FLOOR AREA RATIO IS NOT COMPLYING;

2. ZR 23-141: The proposal will create a non-compliance with respect to open space. Under Zoning Resolution - The minimum required #open space ratio# shall be 150.0. OPEN SPACE IS NOT COMPLYING.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two- (2) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) and open space ratio (“OSR”), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on September 10, 2019 after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Avenue M and East 27th Street, within an R2 zoning district, in an R7-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 33’-4” of frontage along Avenue M, 100 feet of frontage along East 27th Street, 3,333 square feet of lot area and is occupied by an existing two- (2) story plus cellar single-family detached residence and existing garage; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two-family detached* or *semi-detached residence* within the following areas:

(a) Community Districts 11 and 15, in the Borough of Brooklyn; and

(b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and

(c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and

MINUTES

paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single-* or *two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a two- (2) story plus cellar detached building with 0.56 FAR (1,853 square feet of floor area), 124 OSR (2,290 square feet of open space), a front yard along Avenue M with a depth of 20 feet, a front yard along East 27th Street with a depth of 1'-3", and two (2) side yards with widths of 30'-3" and 5'-1"; and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the single-family detached residence resulting in a three- (3) story plus cellar single-family detached residence with 0.94 FAR (3,134 square feet of floor area), 67% OSR (2,095 square feet of open space), a front yard along Avenue M with a depth of 15 feet, a front yard along East 27th Street with a depth of 5'-10", and two (2) side yards with widths of 20 feet and 5'-1"; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (1,667 square feet of floor area) is permitted and a minimum of 150% OSR (2,501 square feet of open space based on a complying 0.5 FAR) is required pursuant to ZR § 23-141; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,043 square feet to 1,238 square feet, the second floor from 810 square feet to 1,162 square feet, and create an attic with 734 square feet of floor area; and

WHEREAS, the proposed enlargement includes an extension of the existing non-complying 1'-3" foot front yard along East 27th Street, decreasing the degree of non-compliance, and, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying front yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two- (2) family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 110 qualifying residences, 90 (82 percent) residences have an FAR greater than 0.5, ranging from 0.51 to 1.47, and 13 residences have an FAR of 0.94 or greater; and

WHEREAS, the applicant submitted a lot coverage study demonstrating that, within the Study Area, 59 lots (54 percent) have 37 percent or greater lot coverage, ranging from 37 percent to 140 percent, and the proposed 37 percent is consistent with the lot coverage of the Study Area; and

WHEREAS, at hearing, the Board raised concern regarding the compliance of the proposed enlargement with underlying zoning requirements relating to height; and

WHEREAS, in response, the applicant revised the plans to demonstrate that only the dormers pierce the sky

MINUTES

exposure plane and the proposed enlargement complies with zoning requirements relating to height; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No.19-BSA-128K, dated May 8, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing two- (2) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) and open space ratio (“OSR”), contrary to ZR § 23-141; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received September 10, 2019”-Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.94 FAR (3,134 square feet of floor area) and a minimum of 67% OSR (2,095 square feet of open space), as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No. 2019-87-BZ”), shall be obtained within four (4) years, by September 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

2018-177-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kasim Allaham, owner.

SUBJECT – Application November 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family to be converted to a single-family home, contrary to floor area (§23-142); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2061 Ocean Parkway, Block 7109, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for decision, hearing closed.

2019-29-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 Clinton LLC, owner; International Charter School, lessee.

SUBJECT – Application February 6, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (International Charter School) contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 30 Clinton Avenue, Block 1872, Lot(s) 44, 48, 49, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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September 27, 2019

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MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|-------------------------------------|-----|
| DOCKET | 715 |
| CALENDAR of October 22, 2019 | |
| Morning | 716 |
| Afternoon | 717 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, September 17, 2019**

Morning Calendar718

Affecting Calendar Numbers:

| | |
|--|---|
| 540-84-BZ | 341 Soundview Avenue, Bronx |
| 132-04-BZ | 310 East Houston Street, Manhattan |
| 418-50-BZ | 73-69 217 th Street, 73-36 Springfield Boulevard, 219-02 74 th Avenue, 73-10 220 th Street, Queens |
| 751-60-BZ | 105 New Dorp Lane aka 1395 New Dorp Plaza, Staten Island |
| 90-91-BZ | 630-636 City Island Avenue, Bronx |
| 171-93-BZ | 32-45 75 th Street, Queens |
| 227-09-BZ | 100-14 Roosevelt Avenue, Queens |
| 216-13-BZ | 750 Barclay Avenue, Staten Island |
| 250-14-AII, 253-14-AII thru 257-14-AII | 5041, 5300, 5310, Grosvenor Avenue, 5041, 5030, 5040 Goodridge Avenue, Bronx |
| 205-15-A thru 214-15-A | 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Queens |
| 2017-147-A | 71-12 Main Street, Queens |
| 2018-183-A | 71-12 Main Street, Queens |
| 2018-125-A | 495 Wild Avenue, Staten Island |
| 2019-89-A & 2019-94-A | 36 West 66 th Street aka 50 West 66 th Street, Manhattan |
| 2019-1-A thru 2019-5-A | 7, 11, 15, 19, 23 Nello Court, Staten Island |
| 2018-129-A | 484F Sharrotts Road, Staten Island |
| 2018-178-A | 2 Oaktree Way aka 300 Ocean Terrace, Staten Island |
| 2016-4239-BZ | 180 Madison Avenue, Staten Island |
| 2016-4465-BZ | 129 Anderson Street, Staten Island |
| 2018-95-BZ | 120 Avenue M, Brooklyn |
| 2018-104-BZ | 1234-1238 East 22 nd Street, Brooklyn |
| 43-11-BZ | 1926 East 21 st Street, Brooklyn |
| 157-15-BZ | 3925 Bedford Avenue, Brooklyn |
| 231-15-BZ | 5278 Post Road, Bronx |
| 2017-265-BZ | 318-320 54 th Street aka 5401 3 rd Avenue, Brooklyn |
| 2018-109-BZ | 9-03 44 th Road, Queens |
| 2018-168-BZ | 1769 East 26 th Street, Brooklyn |
| 2018-171-BZ | 1 East 70 th Street, Manhattan |

Afternoon Calendar746

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-27-BZ | 16 Dover Street, Brooklyn |
| 2018-191-BZ | 215 North 10 th Street, Brooklyn |
| 2019-6-BZ | 138 East 39 th Street, Manhattan |
| 2019-23-BZ | 290 Mulberry Street aka 41 East Houston Street, Manhattan |
| 2019-157-BZ | 88-02 Northern Boulevard, Queens |
| 2019-158-BZ | 89-03 57 th Avenue, Queens |

DOCKETS

New Case Filed Up to September 17, 2019

2019-262-BZ

141-55 77th Avenue, Block 6628, Lot(s) 84, 86, 88, Borough of **Queens, Community Board: 8**. Variance (§72-21) to permit the enlargement of an existing House of Worship (UG 4) (Young Israel of Queens Valley) contrary to ZR §24-11 (FAR and lot coverage); ZR §24-35 (side yards); ZR 2§4-36 (rear yard); §24-521 (height) and ZR §25-31 (parking). R3-2 zoning district. R3-2 district.

2019-263-BZ

2122 Richmond Avenue, Block 2102, Lot(s) 120, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district. R3-2/C1-2 district.

2019-264-BZ

3568 Nostrand Avenue, Block 7386, Lot(s) 129, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district. R4/C1-2 district.

2019-265-BZ

35 Giffords Lane, Block 4624, Lot(s) 0020, Borough of **Staten Island, Community Board: 3**. Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District. R2/C1-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING OCTOBER 22, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 22, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDARS

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for BOLLA EM Realty, LLC, owner.

SUBJECT – Application December 4, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to enlarge the existing accessory building and convert the automotive service bays to accessory convenience store. C2-1/R3-2 zoning district. PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

200-98-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 633 Realty LLC, owner; TSI East 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment (New York Sports Club) on portions of the cellar level with entrance and ADA access on the first floor of a 41-story plus cellar commercial building which expired on April 30, 2018; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 633 Third Avenue, Block 1314 Lot(s) 1447, 1449, 1450, 1452 and 1453, Borough of Manhattan.

COMMUNITY BOARD #6M

274-00-BZ

APPLICANT – Troutman Sanders LLP, for Carob Bean Realty Corp. II, owner.

SUBJECT – Application June 17, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of office use (UG 6) contrary to underlying use regulations which expired on February 27, 2011; Waiver of the Board’s Rules. R10 Murray Hill Historic District.

PREMISES AFFECTED – 134 East 38th Street, Block 893, Lot 271, Borough of Manhattan.

COMMUNITY BOARD #6M

59-08-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 591-595 Forest Avenue Realty Corp., owner; Push Fitness Club, lessee.

SUBJECT – Application August 21, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Push Fitness Club) on the first and second floors of an existing building which expired on February 14, 2018; Amendment to reflect a change in operator; Waiver of the Rules. C2-1/R3X district.

PREMISES AFFECTED – 591 Forest Avenue, Block 154, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #1SI

61-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for B. Bros Broadway Realty, LLC, owner; Crunch LLC, lessee.

SUBJECT – Application May 23, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (Crunch Fitness) on the cellar, mezzanine, first and second floors of a 23-story commercial building which expired on April 22, 2019. M1-6 Special Garment Center District.

PREMISES AFFECTED – 1385 Broadway, Block 813, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEALS CALENDARS

2017-99-A

APPLICANT – Sheldon Lobel, P.C., for MM Newtown Capital, LLC, owner.

SUBJECT – Application March 31, 2017 – Proposed construction of a fabric enclosure not fronting on a legally mapped street contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 37-98 Railroad Avenue, Block 312, Lot 279, Borough of Queens.

COMMUNITY BOARD # 2Q

CALENDAR

REGULAR MEETING OCTOBER 22, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 22, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-66-BZ

APPLICANT – Sheldon Lobel, P.C., for 118 West 72nd Street Retail LLC, owner; Dakota Personal Training LLC, lessee.

SUBJECT – Application May 9, 2018 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (*Dakota Personal Training and Pilates*) with the cellar and first floor of an existing 13-story plus cellar building contrary to ZR §32-10. C4-6A (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 118 West 72nd Street, Block 1143, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #7M

2018-59-BZ

APPLICANT – Akerman, LLP, for 3030 Equities, LLC, owner; Debrinator, LLC, lessee.

SUBJECT – Application April 25, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Powerhouse Gym*) on a portion of the ground floor of an existing commercial building contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 3030 Northern Boulevard, Block 239, Lot 60, Borough of Queens.

COMMUNITY BOARD #1Q

2018-181-BZ

APPLICANT – Eric Palatnik, P.C., for Izumi Estate Co., Ltd, owner; China Liangtse KG Wellness One LLC, lessee.

SUBJECT – Application November 15, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*China Liangtse Wellness Spa*) on the first floor of a seven-story commercial building contrary to ZR §32-10. C5-2 Special Midtown District.

PREMISES AFFECTED – 150 East 55th Street, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

2019-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Rimani Realty LLC, owner.

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2019-41-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for Ocean Prime LLC, owner.

SUBJECT – Application March 1, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Life Time*) to be located on a portion of the 1st floor of an existing building contrary to ZR §32-10. C5-5 Special Lower Manhattan District.

PREMISES AFFECTED – 1 West Street, Block 15, Lot 1001, Borough of Manhattan.

COMMUNITY BOARD #1M

2019-62-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Remainderman 435 Hudson LLC, owner; S10 Training, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*S10*) to be located within the cellar of an existing commercial building with a small lobby entrance on the first floor contrary to ZR §42-10. M1-5(MX-6) zoning district.

PREMISES AFFECTED – 435 Hudson Street, Block 602, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #2M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 17, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board pursuant to ZR § 72-21, which permitted the use of the site as an automotive repair station (Use Group 16), and expired on June 20, 2016; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with continued hearings on October 30, 2019, January 8, 2019, April 9, 2019, and July 16, 2019, and then to decision on September 17, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application on condition that signage containing the company name, address and contact number be installed; signage required by the New York State Department of Motor Vehicles and other required signage be installed; and, the operator prevent double-parking, the parking of vehicles on the sidewalks or without proper license plates, and ensure all traffic parking laws are followed; and

WHEREAS, the subject site is located on the southwest corner of the intersection formed by Soundview Avenue and Bolton Avenue, in an R3-2 zoning district, in Bronx; and

WHEREAS, the site has approximately 38 feet of

frontage along Soundview Avenue, 66 feet of frontage along Bolton Avenue, 9,927 square feet of lot area and is occupied by an existing one- (1) story automotive repair station building with approximately 7,037 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 10, 1986, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the erection of a one (1) story custom cabinet shop (Use Group (“UG”) 16), which does not conform with the district use regulations, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the variance be limited to a term of 20 years, to expire on June 10, 2006; the owner comply with the conditions set forth in the conditional negative declaration; the hours of operation be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday; the two (2) major trees at the rear of the property be retained on the site; all landscaping trees and fencing be adequately maintained and replaced when necessary; all loading and unloading be within the building; all doors remain closed during working hours; all signs conform to C1 district regulations; the two (2) major trees at the rear of the lot be protected during construction; no certificate of occupancy be issued until all landscaping, as shown on the plans, be in place; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with ZR § 72-23, by June 10, 1990; and

WHEREAS, on June 20, 2006, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-413, legalized a change in use to a UG 16 automotive repair shop, as well as minor interior changes related to the change of use, on condition that all work substantially conforms to drawings as they apply to the objection, filed with the application; the term of the variance be limited to ten (10) years, to expire on June 20, 2016; there be no cars parked on, or obstructing, the sidewalk; the hours of operation be limited to 8:00 a.m. to 6:30 p.m., Monday through Saturday; fencing and screening be provided in accordance with BSA-approved plans; the premises be kept graffiti-free; the above conditions be listed on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the

MINUTES

Board may, in appropriate cases, permit an extension of term of a variance; and

WHEREAS, the applicant represents that the site continues to operate as an automotive repair station and continues to remain closed on Sundays; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the safety of pedestrians in front of the subject site and the potential of conflict with cars exiting the repair shop; and

WHEREAS, in response, the applicant provided an operational plan, containing traffic controls, gates, signage and general operating rules to minimize and prevent the conflict between vehicles exiting the subject repair station and passing pedestrians; and

WHEREAS, by letter dated, December 28, 2018, the Fire Department objected to the subject application and states that a review of their records indicates that the subject automotive repair station has one (1) outstanding violation order (E493434) for failure to obtain approval for the paint spray booth and permit from the Fire Department for flammable finishing operation, and requests that the Board deny the subject application for failure to comply with Fire Department orders; and

WHEREAS, in response, by letter dated January 3, 2019, the applicant provided evidence of Department of Buildings approved plans and letter of completion for the spray booth, Fire Department certificate of fitness for the flammable finishing operation and proof of payment of the outstanding violation order; and

WHEREAS, by letter dated January 7, 2019, the Fire Department states that, based on the applicant's submission, the Bureau of Fire Prevention has no objection to the subject application and the violation order will be dismissed; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated June 10, 1986 June 10, 1986, as amended through June 20, 2006 June 20, 2006, so that as amended this portion of the resolution shall read: "to *permit* an extension of term for ten (10) years; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received March 21, 2019"-Three (3) sheets; and *on further condition*:

THAT the term of the variance shall expire on June 20, 2026;

THAT security cameras shall be installed around the premises and maintained operational 24-hours per day, seven (7) days per week;

THAT there shall be no cars parked on, or obstructing, the sidewalk, at any time;

THAT the hours of operation for the automotive repair station shall be limited to Monday through Friday, 9:00 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to 3:00 p.m.;

THAT automatic roll-up gates shall be maintained, as shown on BSA-approved plans, and shall be closed at 5:00

p.m., daily;

THAT a flashing light and audible noise shall be installed to alert pedestrians of cars exiting the repair shop and crossing the sidewalk, maintained in proper operating condition at all times;

THAT a speed bump shall be installed and maintained to ensure vehicles enter and exit the site at a safe speed, as shown on BSA-approved plans;

THAT a convex mirror shall be installed and maintained to ensure vehicles and pedestrians are visible to one another;

THAT signage shall be installed and maintained at the garage entrances, stating "CAUTION LOOK BOTH WAYS – ACTIVE DRIVEWAY, KEEP AREA CLEAR AT ALL TIMES," as shown on BSA-approved plans;

THAT signs shall be installed and maintained on the Soundview Avenue and Bolton Avenue frontage walls of the subject site, as shown on BSA-approved plans, stating "NO PARKING ON SIDEWALK" and "CARS TOWED AWAY AT OWNER'S EXPENSE;"

THAT the landscaping shall be installed as shown on BSA-approved plans and maintained in first-rate condition, including the planting of ground cover ivy in the open space at the rear of the building;

THAT the site shall be maintained free of debris and graffiti at all times;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 540-84-BZ"), shall be obtained within one (1) year, by September 17, 2020;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, September 17, 2019.

MINUTES

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 20, 2017, acting on Alteration Type I Application No. 122910449, reads in pertinent part:

“Proposed subdivision and reduction in lot area of development previously approved by the Board of Standards and Appeals is contrary to BSA resolution under Cal. No. 132-04-BZ and must be referred back to the Board;” and

WHEREAS, this is an application to reopen and amend a variance, previously granted by the Board, which permitted commercial use on the ground floor of a proposed seven- (7) story, mixed-use building, to facilitate the transfer of 11,234 square feet of development rights appurtenant to the subject site by the owner of the site to several potential contiguous lots; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, with continued hearings on November 8, 2018, February 5, 2019, July 16, 2019, and September 17, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Manhattan, opposes this application unless the applicant promises to withdraw the waiver to convert the community facility to residential and will maintain the community facility use in perpetuity; and

WHEREAS, the subject site is a triangular-shaped lot located on the northeast corner of East Houston Street and Avenue B, within an R8A zoning district, in Manhattan; and

WHEREAS, the site has approximately 292 feet of frontage along East Houston Street, 49 feet of frontage along Avenue B, 7,901 square feet of lot area and is occupied by an existing seven- (7) story plus cellar mixed-use commercial, community facility and residential building containing 36,329 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 2004, when, under the

subject calendar number, the Board granted a variance (the “Variance”), pursuant to ZR § 72-21, to permit, in a then-R7-2 zoning district, commercial use on the ground floor of the proposed seven- (7) story plus cellar mixed-use commercial, community facility and residential building, on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the ground floor commercial space not be occupied by an eating and drinking establishment or a bar; the conditions be noted in the certificate of occupancy; all signage comply with regulations applicable to a C1 zoning district; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, by letter dated April 9, 2014, the Board permitted a modification to the Board-approved plans to permit an increase in the floor area of the site, from 2.85 to 3.82 residential floor area ratio, 4.05 to 4.30 total floor area ratio, in light of the 2009 rezoning which changed the zoning district from an R7-2 to an R8A; and

WHEREAS, the applicant additionally requests an amendment to reflect the existing building floor area, 4.60 floor area ratio (“FAR”) (36,329 square feet of floor area), in excess of the Board’s approval; and

WHEREAS, the applicant states that the proposed transfer of development rights is consistent with the New York Court of Appeals’ decision in *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been previously granted; and

WHEREAS, the applicant represents that the transfer of the unused development rights from the subject site is not in conflict with the Variance; and

WHEREAS, with regards to the as-built conditions, the applicant submits that the building was overbuilt approximately 1,600 square feet more than approved in the Variance but that 738 square feet of floor area remained at the time of the grant; and

WHEREAS, the applicant notes that the Board made all of the findings required pursuant to ZR § 72-21 in approving the Variance; and

WHEREAS, accordingly, the applicant states that the excess floor area did not exist at the time of the original variance grant in 2004 and submitted a statement from a financial consultant stating that a development with a total of zoning floor area of 36,329 square feet, consisting of residential zoning floor area of 26,441 zoning square feet, commercial zoning floor area of 4,132 square feet and community facility zoning floor area of 5,756 square feet

MINUTES

would not result in an excessive return on investment and is consistent with 2004 Variance; and

WHEREAS, therefore, the applicant states that an amendment to the Variance to facilitate the transfer of the unused development rights from the subject site to a larger development site does not undermine the integrity of the Board's earlier findings with regards to ZR §§ 72-21(b) or 72-21(e); and

WHEREAS, specifically, as stated above, the applicant submits that, at the time of the variance, the subject site was located within an R7-2 zoning district and, as such, the subject excess development rights did not yet exist; and

WHEREAS, the differences in timing and the then-applicable zoning support the conclusion that the use of the subject site's unused development rights was not foreseeable by the owner or the Board; and

WHEREAS, therefore, the Board finds that the proposed transfer does not implicate or affect the basis for its findings pursuant to ZR § 72-21, specifically the (b) and (e) findings, at the time that they were made; and

WHEREAS, this application supersedes the modifications previously approved by letter on April 9, 2014; and

WHEREAS, based upon its review of the record, the Board has determined that the proposed amendment is appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, adopted on November 9, 2004, so that as amended this portion of the resolution shall read: "to *permit* the merger of the subject site with contiguous parcels on Block 384, in Manhattan, and the associated modifications to the BSA-approved site plan; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked 'Received August 28, 2019'-Nine (9) sheets; and *on further condition*:"

THAT there shall be no conversion of the second floor community facility use to residential use;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the ground floor commercial space shall not be occupied by an eating and drinking establishment or a bar;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all signage shall comply with regulations applicable to a C1 zoning district;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 132-04-BZ"), shall be obtained within one (1) year, by September 17, 2020; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its

jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, September 17, 2019.

418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants' Corp., owner.

SUBJECT – Application September 12, 2017 – Compliance Hearing.

PREMISES AFFECTED – 73-69 217th Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74th Avenue (Block 7754, Lot 3); 73-10 220th Street (Block 7755, Lot 3), Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for adjourned hearing.

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board's Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for adjourned hearing.

90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming use with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment is for a modification of the interior layout and sizes of the commercial units, and a modification in the number of accessory parking spaces from the previous approval; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

MINUTES

APPEALS CALENDAR

171-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Lacher/Koepfel Realty Corp., owner.

SUBJECT – Application November 6, 2017 – Extension of Term of a previously approved (§72-21) which permitted the legalization of an existing auto storage facility and the parking of twenty-four (24) cars on the vacant portion of the site which expired on November 22, 2014; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 32-45 75th Street, Block 1171, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

227-09-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero/Chris Realty Holding Corp., owner.

SUBJECT – Application February 4, 2019 – Extension of Time to complete construction of a previously approved Variance (§72-21) permitting the construction of a two-story commercial building, contrary to use regulations (§22-10) which expired on August 16, 2015; Waiver of the Board's Rules. C1-4 Zoning District.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, formerly 100-16 Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to October 3, 2019, at 10 A.M., for continued hearing.

216-13-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application July 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (Boardwalk Avenue), contrary to General City law Section 35. Companion Appeal application was granted pursuant to BSA Calendar Number 217-13-A which expired on June 24, 2018; Waiver of the Board's Rules. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6354/6397, Lot(s) 40, 7, 9, 12, 19 (Ten 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

250-14-AII, 253-14-AII thru 257-14-AII

APPLICANT – Sheldon Lobel, P.C., for Villanova Heights, Inc., owner.

SUBJECT – Application April 22, 2019 – Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and Vested Rights. (R1-2) zoning district.

PREMISES AFFECTED – 5041, 5300, 5310, Grosvenor Avenue, 5041, 5030, 5040 Goodridge Avenue, Block 5831, Lot 50, Block 5839, Lot (s) 4025, 4018, 3940, 3630, 3635, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for renewals of building permits associated with previously granted common law vested rights applications, which reinstated Department of Buildings (“DOB”) Permit Nos. 20092252801-NB, 20092261701-NB, 20092262601-NB, 20092260801-NB, 20092255501-NB and 20092256401-NB and all related permits necessary to complete construction for a period that expired on June 2, 2019; and

WHEREAS, a public hearing was held on these applications on September 17, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is known as Villanova Heights and is formerly known as the Chapel Farm Estate; it is located in the Riverdale section of the Bronx and is comprised of an eight (8) lot portion of a 15-acre site which contains a total of 15 lots, 12 of which, including the subject site, comprise a Major Development (the “Major Development”) which vested pursuant to statute (of the 12 lots which comprise the Major Development, six (6) are complete and six (6), the subject site, are not complete); and

WHEREAS, the subject site is located south of West 253rd Street, west of Fieldston Road, north of West 250th Street, and east of Iselin Avenue, in the Bronx, within an R1-2 zoning district and also within a Special Natural Area District (the “SNAD”); and

WHEREAS, the lots which comprise the subject site are located on the arcing portion of Grosvenor Avenue that begins at West 250th Street and terminates at Iselin Avenue as well as on that portion of Goodridge Avenue which extends east from Grosvenor Avenue between West 250th Street and West 252nd Street; and

WHEREAS, the subject site is proposed to be developed with six (6) single-family homes (the homes are referred to collectively herein as the “Buildings”); and

MINUTES

WHEREAS, the subject site complies with a prior version of the SNAD regulations; and

WHEREAS, the applicant states that Permit Nos. 20092252801-NB, 20092261701-NB, 20092262601-NB, 20092260801-NB, 20092255501-NB and 20092256401-NB, the new building permits authorizing construction of the Buildings in accordance with R1-2 and then-applicable SNAD zoning district regulations (collectively, the “Permits”), were issued by the Department of Buildings (“DOB”) on December 2, 2004, and all excavation and foundation construction was completed prior to January 21, 2005; and

WHEREAS, on February 2, 2005 (the “Enactment Date”), the City Council voted to adopt the Special Natural Area District amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the homes and had completed and backfilled 100 percent of the Buildings’ foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, however, due to financial hardship, the applicant did not complete construction within two (2) years and obtain certificates of occupancy for the Buildings, as required by ZR § 11-332, and the Permits lapsed by operation of law; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 24, 2007, when, under BSA Cal. No. 20-07-BZY through 31-07-BZY, the Board granted applications recognizing statutory vested rights to complete construction, reinstated all of the permits necessary to complete construction and extended the time to complete construction and obtain certificates of occupancy, pursuant to ZR § 11-332, and renewed the Permits for a term of two (2) years, to expire on April 24, 2009; and

WHEREAS, on June 15, 2009, and June 22, 2011, by letters, the Board renewed the Permits and extended the time to complete construction and obtain certificates of occupancy for two- (2) year periods, the latter of which to expire on April 24, 2013; and

WHEREAS, on July 9, 2013, under BSA Cal. No. 111-13-BZY through 119-13-BZY, the Board granted applications recognizing statutory vested rights to complete construction, reinstated all of the permits necessary to complete construction and extended the time to complete construction and obtain certificates of occupancy, pursuant to ZR § 11-332, and renewed the Permits for a term of one (1) year, to expire on July 9, 2014; and

WHEREAS, on June 2, 2015, under the subject calendar numbers, the Board granted applications recognizing common law vested rights to continue construction of the Buildings, reinstated all of the permits necessary to complete construction of the Buildings and granted an extension of time to complete construction and obtain certificates of occupancy for a term of four (4) years, which expired June 2, 2019; and

WHEREAS, however, as of June 2, 2019, construction was not completed and certificates of occupancy had not been issued; therefore, on that date, the previously reinstated Permits lapsed again by operation of law; and

WHEREAS, accordingly, the applicant seeks further permit renewals to complete the work and obtain certificates of occupancy; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 AD 2d 10 (2d Dept 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 AD 2d 308 (2d Dept 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’”. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, the New Building Permits were lawfully issued prior to the Enactment Date; and

WHEREAS, work completed prior to the Enactment Date constituted substantial construction and substantial expenditures as stated in 20-07-BZY through 31-07-BZY and the statutory renewals thereof; and

WHEREAS, specifically, the applicant claimed that, since the July 9, 2013 grant, and prior to its expiration, it has continued construction of the Buildings and related infrastructure at the site in that it (1) performed site-wide installation of infrastructure, including electrical, fencing of common areas, irrigation and partial landscaping and (2) performed infrastructure work including grading/site preparation for 5310 and 5300 Grosvenor Avenue, as well as the installation of gas line connections for 5030 and 5040 Goodridge Avenue; and

WHEREAS, after June 2011, the applicant expended approximately \$8,921,405, including soft costs, and the applicant states that, between July 1, 2014, and June 2, 2019, it has expended \$23,997,000 in additional construction expenditures; and

WHEREAS, as to serious loss, the inquiry examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant additionally represents that

MINUTES

serious loss would occur absent an extension of time to complete construction because at the subject site, five (5) of the six (6) buildings are complete and, absent the subject relief, certificates of occupancy for all six (6) buildings could not be obtained and the cost of the development could not be recouped; and

WHEREAS, thus, the applicant states that it would suffer a serious loss if the site was required to comply with the SNAD regulations; and

WHEREAS, the Board agrees that complying with the current SNAD regulations would result in a substantial reduction of the market value of the site and cause the applicant a serious economic loss; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building continues to accrue to the owner of the premises; and

WHEREAS, based upon its review of the record, the Board finds that the requested three- (3) year renewals of building permits lawfully issued before the Enactment Date are appropriate with certain conditions, as set forth below.

Therefore, it is Resolved, that these applications made pursuant to the common law doctrine of vested rights requesting reinstatement of Permit Nos. 20092252801-NB, 20092261701-NB, 20092262601-NB, 20092260801-NB, 20092255501-NB and 20092256401-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain certificates of occupancy, are granted for three (3) years from the date of this grant.”

(DOB Application Nos. 20092252801-NB, 20092261701-NB, 20092262601-NB, 20092260801-NB, 20092255501-NB and 20092256401-NB)

Adopted by the Board of Standards and Appeals, September 17, 2019.

205-15-A thru 214-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129th Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, September 17, 2019.

2019-89-A and 2019-94-A

APPLICANT – City Club of New York, for West 66th Sponsor LLC c/o Extell Development Co., owner.

SUBJECT – Application May 7, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7, R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta and Commissioner Scibetta.....4

Recused: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the building permit issued by the Department of Buildings (“DOB”) on June 7, 2017, as amended and reissued April 11, 2019, under New Building Application No. 121190200 (the “Permit”), authorizes construction of a 39-story residential and community-facility building with a total height of 776 feet (the “New Building”) by West 66th Sponsor LLC (the “Owner”) on a zoning lot with 54,687 square feet of lot area; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of the City Club of New York and certain members (“CC Appellant”) and on behalf of Landmark West! (“LW Appellant”) (collectively, “Appellants”), alleging errors in the Permit pertaining to whether the floor-to-ceiling heights of “floor space used for mechanical equipment” in the New Building complied with the “floor area” definition of ZR § 12-10 in effect before May 29, 2019, and whether the New Building complies with applicable bulk-distribution regulations for zoning lots located in the Special Lincoln Square District in accordance with ZR § 83-34; and

WHEREAS, for the reasons that follow, the Board denies this appeal; and

ZONING PROVISIONS

WHEREAS, ZR § 12-10, entitled “Definitions,” provides in pertinent part:

[T]he *floor area* of a *building* shall not include:

...

MINUTES

(8) floor space used for mechanical equipment, except that such exclusion shall not apply in R2A Districts, and in R1-2A, R2X, R3, R4, or R5 Districts, such exclusion shall be limited to 50 square feet for the first *dwelling unit*, an additional 30 square feet for the second *dwelling unit* and an additional 10 square feet for each additional *dwelling unit*. For the purposes of calculating floor space used for mechanical equipment, *building segments* on a single *zoning lot* may be considered to be separate *buildings*; and

WHEREAS, ZR § 82-34, applicable in the Special Lincoln Square District and entitled “Bulk Distribution,” states:

Within the Special District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*.

For the purposes of determining allowable *floor area*, where a *zoning lot* has a mandatory 85 foot high *street wall* requirement along Broadway, the portion of the *zoning lot* located within 50 feet of Broadway shall not be included in *lot area* unless such portion contains or will contain a *building* with a wall at least 85 feet high coincident with the entire *street line* of Broadway; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject site is located on West 66th Street, between Columbus Avenue and Central Park West, in the Special Lincoln Square District (the “Special District”), located partially in a C4-7 zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 350 feet of frontage along West 66th Street, 201 feet of depth, 175 square feet of frontage along West 65th Street, 54,687 square feet of total lot area (35,105 square feet in a C4-7 zoning district and 19,582 square feet in an R8 zoning district), and is occupied by a two-story building and the New Building, which is under construction; and

WHEREAS, in *15 East 30th Street, Manhattan*, BSA Cal. No. 2016-4327-A (Sept. 20, 2017) (“*15 East 30th Street*”), the Board denied an interpretive appeal, finding that DOB appropriately permitted “floor space used for mechanical equipment” to be deducted from floor area without regard to floor-to-ceiling height, ZR § 12-10; and

WHEREAS, on June 7, 2017, DOB issued the Permit, authorizing construction of the New Building, originally proposed as a 27-story residential and community-facility building with a total height of 292 feet on a zoning lot with 15,021 square feet of lot area; and

WHEREAS, on April 11, 2019, DOB reissued the Permit, as amended, authorizing the taller New Building on a larger zoning lot; and

WHEREAS, Appellants commenced this appeal in May 2019 under BSA Calendar No. 2109-89-A and under BSA Calendar No. 2019-94-A, challenging the Permit; and

WHEREAS, on May 29, 2019, the City Council approved with modifications a citywide text amendment generally providing that neither mechanical spaces taller than 25 feet nor mechanical spaces within 75 feet of one another would be deducted from floor area; and

WHEREAS, a public hearing was held on this appeal on August 6, 2019, after due notice by publication in *The City Record*, with a continued hearing on September 10, 2019, and then to decision on September 17, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

ISSUES PRESENTED

WHEREAS, there are two issues presented in this appeal: (1) whether, at the time of the Permit’s reissuance, spaces in the New Building designated to be “used for mechanical equipment” count as floor area under ZR § 12-10 and (2) whether the New Building, which is situated on a zoning lot that is divided by zoning district boundary lines, complies with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and 1

DISCUSSION

WHEREAS, because this is an appeal for interpretation, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” the Zoning Resolution, ZR § 72-11; and

WHEREAS, the Board has reviewed and considered—

1 There is no dispute that vesting under ZR § 11-33 is not before the Board in this appeal. On the other hand, as discussed at hearing, a timely third issue has not been presented by Appellants regarding whether the amount of floor space used for mechanical equipment in the New Building is excessive or irregular, and Appellants’ discussion of mechanical space in the New Building in their initial filings instead center on the volume and floor-to-ceiling heights of mechanical spaces. However, based on the lack of clarity about LW Appellant’s ability to procure a final determination from DOB, testimony corroborated by DOB that a subsequent final determination would be refused, and Appellants’ requests to proceed separately, the Board finds it appropriate to address this third issue, regarding (3) whether the architectural and mechanical plans for the New Building show sufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions, in a subsequent decision. *See* ZR § 72-11 (Dec. 15, 1961) (authorizing the Board “on its own initiative” to “review any . . . order, requirement, decision or determination of the Commissioner of Buildings, [and] of any duly authorized officer of the Department of Buildings”). Accordingly, on September 17, 2019, the Board reopened the appeal filed by LW Appellant under BSA Calendar No. 2019-94-A to receive additional testimony only with respect to this third issue, which is not decided herein and is set for a continued hearing on December 17, 2019.

MINUTES

but need not follow—DOB’s interpretation of the Zoning Resolution in rendering the Board’s own decision in this appeal, and the standard of review in this appeal is *de novo*; and

WHEREAS, as discussed herein, (A) the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of “floor space used for mechanical equipment” in exempting such mechanical space from floor-area calculations, ZR § 12-10; (B) the Board finds that Appellants have failed to demonstrate that the New Building’s zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and (C) the Board has considered all of the parties’ arguments on appeal, including those summarized below; and

A. Height of Mechanical Spaces

WHEREAS, Appellants contend that the Zoning Resolution in effect prior to May 29, 2019, regulated the floor-to-ceiling heights of “floor space used for mechanical equipment” in exempting such mechanical space from floor-area calculations, ZR § 12-10; however, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street*; and

WHEREAS, the Board considered this exact issue in *15 East 30th Street* and determined that, “based upon its review of the record, the definition of ‘floor area’ set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment”; and

WHEREAS, in *15 East 30th Street*, DOB presented testimony that “the Zoning Resolution does not regulate the floor-to-ceiling height of a building’s mechanical spaces,” and the Department of City Planning (“DCP”) also submitted testimony stating that “there are no regulations in the Zoning Resolution controlling the height of mechanical floors”; and

WHEREAS, Appellants present no persuasive reason for the Board to depart from its prior consideration of this issue, and the record further supports the Board’s interpretation of the floor-area definition in *15 East 30th Street*; and

WHEREAS, the record reflects no evidence characterizing the Residential Tower Mechanical Voids Text Amendment, CPC Report No. N 190230 ZRY (April 10, 2019), as a mere clarification rather than a change in law, as asserted by Appellants; and

WHEREAS, instead, the accompanying report states that “[t]he [Zoning] Resolution does not specifically identify a limit to the height of such [mechanical] spaces,” while the text amendment itself explicitly limits the height of mechanical spaces that are exempt from floor-area calculations, *see* CPC Report No. N 190230 ZRY (April 10, 2019); and

WHEREAS, the Residential Tower Mechanical Voids

Text Amendment’s attendant environmental review also characterizes the “No-Action Scenario” as allowing the development of buildings with mechanical spaces ranging from 80 to 90 feet in height, while the “With-Action Scenario” would limit mechanical spaces to heights from 10 to 25 feet; and

WHEREAS, lastly, DCP’s *Residential Mechanical Voids Findings: Building Permits Issued b/w 2007 and 2017 R6 through R10 Districts* (Feb. 2019) (“*Residential Mechanical Voids Findings*”), about mechanical spaces’ floor-to-ceiling heights, which Appellants assert is a study of typical floor-to-ceiling heights for mechanical spaces, is not relevant to the Board’s decision in *15 East 30th Street* because *Residential Mechanical Voids* studies floor-to-ceiling heights, while *15 East 30th Street* determined such floor-to-ceiling heights were not regulated to qualify as floor-area-exempted “floor space used for mechanical equipment,” ZR § 12-10; and

WHEREAS, accordingly, based on the foregoing, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of “floor space used for mechanical equipment” in exempting such mechanical space from floor-area calculations, ZR § 12-10; and

B. Bulk Distribution

WHEREAS, the Board finds that Appellants have also failed to demonstrate that the New Building’s zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34; and

WHEREAS, the subject zoning lot is wholly located within the Special District, which was established and designed to “conserve [this area’s] status as . . . a cosmopolitan residential community,” ZR § 82-00(a), and “to promote the most desirable use of land in this area and thus to conserve the value of land and buildings, and thereby protect the City’s tax revenues,” ZR § 82-00(f); and

WHEREAS, because the subject zoning lot is partially located in an R8 zoning district and partially located in a C4-7 zoning district, the Zoning Resolution treats the subject site as a zoning lot divided by a district boundary; and

WHEREAS, the Zoning Resolution contains special provisions for zoning lots divided by district boundaries,² *see* ZR § 77-00, and “[w]henver a zoning lot is divided by a boundary between two or more districts and such zoning lot did not exist on December 15, 1961, or any applicable subsequent amendment thereto, each portion of such zoning lot shall be regulated by all the provisions applicable to the district in which such portion of the zoning lot is located,” ZR § 77-02; and

WHEREAS, there is no dispute that the Zoning Resolution’s split-lot provisions apply “on a regulation-by-regulation basis,” *Beekman Hill Ass’n v. Chin*, 274 A.D.2d 161 (1st Dep’t 2000); and

² Such zoning lots are commonly called “split lots.”

MINUTES

WHEREAS, however, Appellants contend that the New Building's zoning lot does not comply with the Zoning Resolution's split-lot provisions with respect to the Special District's bulk-distribution regulations, *see* ZR § 82-34; and

WHEREAS, more specifically, Appellants contend that the Special District's bulk-distribution regulations and tower regulations, ZR §§ 82-34 and 82-36, are intended to operate together—always, and only, together—such that the Special District's bulk-distribution regulations do not constitute “provisions applicable to the [R8] district in which . . . such portion of the zoning lot is located,” ZR § 77-02; and

WHEREAS, there is no dispute that the New Building is located on a split lot for purposes of the tower-coverage regulations and that the New Building complies with the Special District's applicable tower-coverage regulations, *see* ZR § 82-36; and

WHEREAS, Appellants, the Owner, and DOB vigorously dispute whether the Special District's bulk-distribution regulations apply to the R8 portion of the subject site, *see* ZR § 82-34; and

WHEREAS, the Zoning Resolution provides that “[w]ithin the Special District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*,” ZR § 82-34; and

WHEREAS, from this provision, it is clear that the bulk-distribution regulations apply “[w]ithin the Special District”—in other words, throughout the Special District without qualification or regard to subdistrict, street frontage, or underlying zoning district; and

WHEREAS, nothing about the text of the Special District's bulk-distribution regulations evinces an intent to link inextricably these bulk-distribution regulations with tower-coverage regulations; and

WHEREAS, nowhere in the text of this first sentence is there a cross-referenced citation to the Special District's tower-coverage regulations or to the bulk-distribution or tower-coverage regulations found at ZR §§ 23-65, 33-45 or 35-64, *see* ZR § 82-34; and

WHEREAS, in comparison, the text of the second sentence contains provisions applicable to a specifically defined area (“along Broadway”), ZR § 82-34, and the Special District's tower-coverage regulations contain similarly delineated areas (“Subdistrict A” and “Block 3”), ZR § 82-36; and

WHEREAS, on the other hand, the Special District's bulk-distribution regulations applicable to the New Building contain no such qualification—providing only the blanket applicability of “[w]ithin the Special District,” ZR § 82-34; and

WHEREAS, there is no basis to import the qualifications suggested by Appellants into the Special District's bulk-distribution regulations where the text describes other regulations as applicable in specifically defined areas (“along Broadway,” “Subdistrict A,” and “Block 3”) in other instances, ZR §§ 82-34 and 82-36; and

WHEREAS, the Board has considered evidence presented by Appellants but finds it unconvincing at best: for instance, *Regulating Residential Towers and Plazas: Issues and Options*, DCP No. 89-46 (Nov. 1989) (“*Regulating Residential Towers and Plazas*”), and the timing of an unrelated same-day text amendment to ZR § 23-651 provide no support for Appellants' assertion that the Special District's bulk-distribution regulations always and only apply together with the Special District's tower-coverage regulations; DCP's *Regulating Residential Towers and Plazas* says no such thing, and the timing of unrelated text amendments provides no guidance whatsoever; and, if anything, DCP's *Regulating Residential Towers and Plazas* reflects that the City rejected an outright height limitation of 275 feet within the Special District, favoring the more flexible bulk controls set forth in ZR § 82-00; and

WHEREAS, while the Board has heard and considered all of Appellants' arguments, Appellants have presented no persuasive basis to find the applicability of the Special District's bulk-distribution regulations unclear, so the Board declines Appellants' invitation to delve further into the legislative history “in strictly applying and interpreting the provisions of” the Special District's bulk-distribution regulations in this appeal, ZR § 77-11; and

WHEREAS, Appellants contend that this literal interpretation (“[w]ithin the Special District” means “throughout the Special District”) leads to absurd results that gut the purported purpose of the Special District's bulk-distribution—to whitt, reducing the height of buildings; and

WHEREAS, however, nothing in the record indicates that this literal interpretation reflects a mistake or scrivener's error in drafting the 1994 text amendment to the Special District's bulk-distribution regulations; and

WHEREAS, the record instead reflects testimony and credible evidence in the form of architectural diagrams and examples of buildings in the vicinity indicating that such a result is not absurd and that, instead, the Special District's bulk-distribution regulations do operate to reduce the height of buildings in the Special District—only not to the extent Appellants wish; and

WHEREAS, at hearing, the Board examined a number of examples of buildings in the Special District constructed before and after the enactment of the Special District's bulk-distribution regulations in 1994, finding the pre-1994 buildings generally exceeded the heights of post-1994 buildings on similarly sized zoning lots; and

WHEREAS, the Board also compared buildings constructed inside and outside the Special District, finding that post-1994 buildings outside the Special District generally exceeded the heights of post-1994 buildings inside the Special District on similarly sized zoning lots; and

WHEREAS, this discrepancy in building height before and after the enactment of the Special District's bulk-distribution regulations and this discrepancy inside and outside the Special District both lend credence to DOB and the Owner's assertion that the Special District's bulk-distribution regulations—as interpreted herein—do operate

MINUTES

to reduce the height of buildings in the Special District; and

WHEREAS, at hearing, the Board further noted that floor plates the size of those in the New Building—a recent architectural development that results in less floor area being used per floor and that allows for taller towers in zoning districts without height limits—could not have been anticipated in 1994 when the City amended the Special District’s bulk-distribution regulations, but the Board also observed that Appellants’ height concerns in this appeal appear focused not on the Special District’s bulk-distribution regulations but rather on the height of mechanical spaces in the New Building—a separate issue settled in *15 East 30th Street* and addressed above; and

WHEREAS, accordingly, the Board finds that Appellants have failed to demonstrate that the Zoning Resolution treats the New Building’s zoning lot as a split lot with respect to the Special District’s bulk-distribution regulations and that Appellants have failed to demonstrate that the New Building’s zoning lot does not comply with the bulk-distribution regulations applicable in the Special District under ZR § 82-34; and

C. Parties’ Positions

WHEREAS, in reaching its decision set forth herein, the Board has considered all of the parties’ arguments on appeal, including those put forth by Appellants, DOB, and the Owner, but ultimately finds Appellants’ arguments unpersuasive; and

Appellants’ Position

WHEREAS, the Board has considered all of Appellants’ arguments on appeal but finds them ultimately unpersuasive in light of the foregoing; and

WHEREAS, Appellants state that this appeal should be granted because, at the time of the Permit’s reissuance, “196 vertical feet of purported mechanical space in the midsection of” the New Building would not be “used for mechanical equipment” and is not “customarily accessory to residential uses,” therefore should be included as “floor area” as defined in ZR § 12-10, and because the New Building does not comply with the bulk-distribution regulations applicable in the Special District, *see* ZR § 82-34; and

Appellants: Height of Mechanical Spaces

WHEREAS, Appellants state that “196 vertical feet of purported mechanical space” in the New Building do not comply with the ZR § 12-10 “accessory use” definition because “these floors” are not “customarily found in connection with residential uses”; and

WHEREAS, Appellants state that this issue is not settled by the Board’s *15 East 30th Street* decision, where the appellant in that appeal failed to provide any evidence or expert opinion that mechanical space in that building was “irregular”; and

WHEREAS, Appellants state that, however, since the Board’s resolution of that appeal, DCP studied mechanical space in 796 residential buildings constructed between 2007 and 2017 in R6–R10 zoning districts, finding that “[o]nly a few TOB [tower-on-base] buildings had a mechanical floor

below the highest residential floor (exclusive of cellars),” that “their typical height was 12–15 feet” and that “[l]arger mechanical spaces were generally reserved for the uppermost floors of the building in a mechanical penthouse, or in the cellar below ground,” *Residential Mechanical Voids Findings*; and

WHEREAS, Appellants state that DCP’s *Residential Mechanical Voids Findings* shows that the New Building’s mechanical space, with an aggregate height of 229 feet throughout the New Building, is anomalous—not customary—because of its height; and

WHEREAS, Appellants state that the Owner’s argument that the mechanical spaces do not constitute a “use” under the Zoning Resolution is unpersuasive because these spaces are “designed,” “arranged,” “intended,” “maintained” and “occupied” for mechanical equipment, though Appellants assert their use is better characterized as increasing the New Building’s height; and

WHEREAS, Appellants state that mechanical spaces in the New Building are not “floor space used for mechanical equipment,” ZR § 12-10, because they are unnecessary since no mechanical equipment requires floor-to-ceiling heights of 48 feet to 64 feet; and

WHEREAS, Appellants state that, accordingly, mechanical spaces in the New Building do not qualify as “floor space used for mechanical equipment” that is exempt from floor-area calculations, ZR § 12-10; and

Appellants: Bulk Distribution

WHEREAS, Appellants state that the New Building does not comply with the Zoning Resolution’s split-lot provisions and the Special District’s bulk-distribution regulations under ZR §§ 82-34, 77-02 and 33-48; and

WHEREAS, first, Appellants state that the text “[w]ithin the Special District” is vague, and the Special District’s bulk-distribution regulations do not apply in districts where, as Appellants contend, no towers are permitted; and

WHEREAS, Appellants state that, here, interpreting the Special District’s bulk-distribution regulations to distribute “at least 60 percent of the total floor area” across the entirety of the subject zoning lot “below a height of 150 feet from curb level,” ZR § 82-34, runs contrary to the Special District’s bulk-distribution regulations’ purpose; and

WHEREAS, Appellants state that proper application of the Special District’s bulk-distribution regulations requires the total floor area of the tower and base to be equal to the total floor area permitted in the portion of the subject zoning lot located in the C4-7 zoning district; and

WHEREAS, Appellants state that including floor area from the R8 portion of the zoning lot, which floor area is located below a height of 150 feet from curb level, as well as floor area from the C4-7 zoning district does not have the effect of reducing the floor area, and ultimately the height of the tower, which Appellants assert, is the intent of the bulk-distribution regulations; and

WHEREAS, Appellants state that the proffered interpretation by DOB and the Owner actually results in a

MINUTES

base with a total of 48 percent of the total floor area and a tower with 52 percent of the total floor area where, Appellants assert, the legislative intent was otherwise; and

WHEREAS, second, Appellants state that the subject zoning lot does not comply with the Zoning Resolution's split-lot provisions, which state that "each portion of such [split] zoning lot shall be regulated by all the provisions applicable to the district in which such portion of the zoning lot is located," ZR § 77-02, because residential towers are not permitted in the R8 district and are in the C4-7 district, hence the bulk-distribution regulations of ZR § 82-34 cannot apply in an R8 district; and

WHEREAS, third, Appellants state that the phrase in ZR § 82-34 "[w]ithin a Special District" differentiates the applicability of the Special District's bulk-distribution regulations from the generally applicable bulk-distribution rule, set forth in ZR § 23-651(a)(2), and does not make ZR § 82-34 applicable to the R8 portion of the subject zoning lot; and

WHEREAS, Appellants state that the legislative history indicates that "[w]ithin a Special District" does not apply to the R8 portion of the subject site because in its consideration of the Special Lincoln Square District, *see* CPC Report, No. N 940127 (A) ZRM (Dec. 20, 1993) (the "1993 CPC Report") and Special Lincoln Square District Zoning Review (May 1993) (the "1993 DCP Lincoln Square Review"), the Department of City Planning studied six sites (including part of the subject zoning lot before its merger into the larger subject zoning lot) where development may occur, and none of the six were located in the 5.3 percent of the Special District located in an R8 zoning district; and

WHEREAS, Appellants state that the 1993 CPC Report, and the 1993 DCP Lincoln Square Review, do not support the Owner's argument that the bulk-distribution rule should apply to the entire zoning lot because they refer to both the Special District's bulk-distribution regulations and the tower-coverage regulations in tandem as conjunctive "urban design" controls; and

WHEREAS, Appellants state that the 1993 CPC Report's reference to "throughout the district" contrasts with the text amendment's other location-specific controls—such as "along Broadway," "for the Bow Tie sites" and "on the Mayflower block"—that do not apply here; and

WHEREAS, Appellants state that the 1993 CPC Report notes that the tower-on-a-base rules were meant to confine building height to "the low-30 stories" in order to prohibit another Millennium Tower, *id.* at 19, described in the 1993 DCP Lincoln Square Review as "an extreme case [that] will rise to 46 stories or 525 feet in height, with only 42 percent of its bulk located below 150 feet. This is largely due to almost 125,000 square feet of movie theater uses, which create hollow spaces that substantially add to the mass and height of the building," *id.* at 14; and

WHEREAS, furthermore, Appellants state that, even if "[w]ithin a Special District" could be read to apply to the R8 portion of the subject site, ZR § 82-34 must not be interpreted to eviscerate legislative intent; and

WHEREAS, additionally, because the tower-coverage and bulk-distribution text of ZR § 23-651 is substantially similar and "identical in concept," to the bulk distribution text of ZR § 82-34 and the tower-coverage text of ZR § 82-36 Appellants state that there is clear legislative intent that ZR §§ 82-34 and 82-36 must be applied together; and

WHEREAS, Appellants state that the chart in ZR § 23-651 relates general tower-coverage to general bulk-distribution regulations by increasing the amount of floor area that must be located below a level of 150 feet as tower coverage increases, thereby ensuring a constant tower height regardless of tower coverage or lot area, but Appellants provide no evidence or explanation for the absence of such a chart from the Special District's bulk-distribution and tower-coverage regulations, *see* ZR §§ 82-34 and 82-36; and

WHEREAS, Appellants state that DCP's *Regulating Residential Towers and Plazas* supports this contention because it states that "[a] potentially effective approach [to reducing the height of new buildings] could be to require that a minimum percentage of the total floor area of the zoning lot be located at elevations less than 150 feet above the curb level," and "[i]n some instances, an appropriate relationship might be established by coupling other envelope controls, such as a minimum tower coverage, with a lower minimum percentage for the proposed Packing-the-Bulk regulations," *id.* at 27; and

WHEREAS, furthermore, Appellants state that, because ZR § 23-651 and ZR §§ 82-34 and 82-36 purportedly share "a common history and purpose," as suggested by their contemporaneous CPC reports, ZR §§ 82-34 and 82-36 must be applied together, *see* 1993 CPC Report and CPC Report No. N 940013 ZRM (Dec. 20, 1993) (pertaining to tower-on-base regulations for high density districts); and

WHEREAS, additionally, Appellants state that ZR §§ 82-34 and 82-36 only apply to towers, which are not permitted for residential use, but are for community facility uses, in R8 zoning districts; and

WHEREAS, in post-hearing submissions, Appellants argue that the Owner's failure to illustrate a hypothetical building subject to R8 height-and-setback regulations where the Special District's bulk-distribution regulations would have an impact indicates that the Special District's bulk-distribution regulations are pointless because "that Rule is doing no work at all" here; and

WHEREAS, Appellants state that a hypothetical community-facility tower permitted in the R8 portion of the subject site is also unavailing because there was no legislative intent to limit the height of community-facility towers and because the community facility tower regulations at ZR § 24-54(a) predate the 1994 amendments at issue and are not relevant to whether the 1994 amendments to the tower-coverage and bulk-distribution regulations must apply together throughout the Special District; and

WHEREAS, additionally, Appellants state that the text of ZR § 82-34 is ambiguous, and Appellants reiterate that the legislative history indicates that ZR §§ 82-34 and 82-36

MINUTES

must be applied in tandem to the C4-7 portion of the subject site only and not include the R8 portion for bulk-distribution purposes, since tower coverage, ZR § 82-36, applies only to the C4-7 under the split lot rules; and

WHEREAS, Appellants state that the Zoning Resolution's calculations that relate tower-coverage regulations to bulk-distribution regulations, as indicated in the chart in ZR § 23-651, similarly dictate that development cannot mathematically exceed the "low-30 stories" referenced in the legislative history of ZR § 82-34, and Appellants submitted a spreadsheet without zoning citations purporting to demonstrate that "the parameters [on lot area, bulk distribution, tower coverage, and the percentage of floor space that does not count as floor area] embody a mathematical limit that, not coincidentally, is in the low-30 stories"; and

WHEREAS, furthermore, Appellants state that the literal reading of ZR § 82-34 urged by DOB and the Owner does not control in this appeal because it leads to the absurd result of increasing the amount of floor area located more than 150 feet above curb level which results in a taller tower than was contemplated by the Zoning Resolution's drafters; and

WHEREAS, lastly, Appellants state that it is not plausible that ZR § 82-34 was meant to apply to the R8 portion of the subject site because there is no evidence of such intent; and

WHEREAS, accordingly, Appellants submit that the New Building violates the Special District's bulk-distribution regulations, *see* ZR § 82-34; and

DOB's Position

WHEREAS, DOB states that this appeal should be denied because, at the time of the Permit's reissuance, the Zoning Resolution did not regulate the floor-to-ceiling heights of floor space used for mechanical equipment and because the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District; and

DOB: Height of Mechanical Spaces

WHEREAS, DOB states that notwithstanding an amendment to the Zoning Resolution effective May 29, 2019, it is undisputed that the New Building's foundation had been completed by that time, so the New Building is allowed to proceed with construction as of right under ZR § 11-33; and

WHEREAS, DOB, however, disputes that the Zoning Resolution in effect before May 29, 2019, regulated floor-to-ceiling height of mechanical spaces in buildings, as asserted by Appellants; and

WHEREAS, instead, DOB notes that the Zoning Resolution specifically excluded "floor space used for mechanical equipment" from floor-area calculations under the "floor area" definition, ZR § 12-10; and

WHEREAS, DOB states that the New Building's mechanical space constitutes an "accessory use," ZR § 12-10; and

WHEREAS, DOB disputes the Owner's contention

that mechanical space is not a "use" because mechanical space is a "purpose for which a building . . . may be designed, arranged, intended, maintained or occupied" as well as an "activity . . . operation carried on, or intended to be carried on, in a building," ZR § 12-10; and

WHEREAS, DOB states that, in particular, the mechanical space is "either a purpose for which the [New Building] is designed or an activity or operation carried on in the [New Building]"; and

WHEREAS, DOB states that the New Building's mechanical space meets the ZR § 12-10 "accessory use" definition because it is located on the same zoning lot as the related principal residential and community-facility uses; because it is incidental to the principal use by virtue of comprising significantly less floor space than the floor area of the principal uses; because mechanical equipment is customarily found in connection with residential and community-facility uses on a similar scale to the New Building's mechanical space; and because the mechanical space is in common ownership with the principal residential and community-facility uses; and

WHEREAS, DOB states that, additionally, the Board considered this exact issue in *15 East 30th Street* and determined that, "based upon its review of the record, the definition of 'floor area' set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment"; and

WHEREAS, DOB states that, in so determining, the Board specifically credited DOB's technical review of the amount and size of mechanical equipment, and there is no reason to reach a different determination in this appeal; and

WHEREAS, DOB has reviewed and approved the New Building's mechanical equipment and "found that the amount of equipment proposed was sufficient to justify its exemption from floor area as it was serving the principal use"; and

DOB: Bulk Distribution

WHEREAS, DOB states that the New Building complies with the bulk-distribution regulations applicable in the Special District; and

WHEREAS, DOB cites to ZR § 82-64, which states that "[w]ithin the Special District, at least 60 percent of the *total floor* area permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*,"; and

WHEREAS, DOB states that therefore ZR § 82-64 applies throughout the Special District without regard to the underlying district designations, so the New Building's zoning lot is not treated as a split lot subject to ZR § 77-00 for the purposes of the bulk-distribution regulations of ZR § 82-64; and

WHEREAS, DOB states that, instead, the New Building's zoning lot is allowed 548,543 square feet of floor area, of which more than 60 percent (329,126 square feet) is located below a height of 150 feet from curb level in accordance with ZR § 82-64; and

MINUTES

WHEREAS, DOB states that it is undisputed in this appeal that since the zoning lot is a split lot for purposes of tower-coverage regulations, the New Building complies with applicable tower-coverage regulations, ZR § 82-36; and

WHEREAS, DOB states that Appellants' arguments that the New Building is on a split lot for purposes of ZR § 82-34 are unpersuasive because the Zoning Resolution considers split lots on a regulation-by-regulation basis; unlike ZR § 82-36, which only applies to the portion of the subject site in a C4-7 zoning district, ZR § 82-34 applies equally to the entirety of the subject site without regard to the underlying zoning district designations; and there is no basis to conclude that ZR § 82-34 was intended as a modification to general tower-on-a-base provisions of ZR § 23-651(a)(2) whereby ZR §§ 82-34 and 82-36 only operate together, like the provisions of ZR § 23-651; and

WHEREAS, in post-hearing submissions, DOB reiterates that ZR § 82-34 clearly applies throughout the Special District, and as such no reference to the legislative history is necessary to determine legislative intent; and

Owner's Position

WHEREAS, the Owner states that this appeal should be denied because, at the time of the Permit's reissuance, the Zoning Resolution did not regulate the floor-to-ceiling heights of floor space used for mechanical equipment and because the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District; and

Owner: Height of Mechanical Spaces

WHEREAS, the Owner states that, notwithstanding an amendment to the Zoning Resolution effective May 29, 2019, it is undisputed that the New Building's foundation had been completed by that time, so the New Building is allowed to proceed with construction as of right under ZR § 11-33; and

WHEREAS, the Owner, however, disputes that the Zoning Resolution in effect before May 29, 2019, regulated the floor-to-ceiling heights of mechanical spaces in buildings, as asserted by Appellants; and

WHEREAS, in support of this contention, the Owner notes that the Board considered this exact issue in *15 East 30th Street* and determined that, "based upon its review of the record, the definition of 'floor area' set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment"; and

WHEREAS, the Owner notes that, in that appeal, DOB had taken the position that "the Zoning Resolution does not regulate the floor-to-ceiling height of a building's mechanical spaces," and DCP had also submitted testimony stating that "there are no regulations in the Zoning Resolution controlling the height of mechanical floors"; and

WHEREAS, the Owner states that there is no reason for the Board to depart from its prior consideration of this issue and notes that there is now further support for the Board's interpretation of the "floor area" definition; and

WHEREAS, the Owner disputes Appellants' characterization of the text amendment as a mere clarification rather than a change in law; and

WHEREAS, the Owner notes that the resolution accompanying the zoning text amendment, City Planning Commission Report No. N 190230 ZRY (April 10, 2019) states that "[t]he [Zoning] Resolution does not specifically identify a limit to the height of such [mechanical] spaces," when the text amendment explicitly limits the height of mechanical spaces that are exempt from floor-area calculations; and

WHEREAS, the Owner notes that the attendant environmental review also characterized the "No-Action Scenario" as allowing the development of buildings with mechanical spaces ranging from 80 to 90 feet in height, while the "With-Action Scenario" would limit these mechanical spaces to heights from 10 to 25 feet; and

WHEREAS, the Owner states that mechanical spaces in the New Building need not comply with the Zoning Resolution's "accessory use" definition, contrary to Appellants' assertions that mechanical spaces of such height are not "customarily found in connection with" mechanical spaces; and

WHEREAS, the Owner states that a mechanical space is neither a "use" nor an "accessory use" under ZR § 12-10 because the Zoning Resolution defines a "use" as "(a) any purpose for which a building or other structure or an open tract of land may be designed, arranged, intended, maintained or occupied; or (b) any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on an open tract of land" and defines an "accessory use" as "*use* which is clearly incidental" to a principal use; and

WHEREAS, instead, the Owner characterizes mechanical space as "building infrastructure used for the operation of any type of building . . . similar to many other areas within a building, such as elevator shafts or stairwells, elevator or stair bulkheads, or exterior wall thickness"; and

WHEREAS, assuming mechanical space is appropriately classified as an accessory use, the Owner states that there is no reason in this appeal to depart from the Board's consideration of the specific issue in *15 East 30th Street*, where the Board determined that the floor-to-ceiling height of mechanical space was not relevant to its classification as an accessory use and where DCP had submitted testimony that, "regardless of its floor-to-ceiling height, any space which is devoted to accessory residential mechanical equipment is considered to be a legal accessory use"; and

WHEREAS, contrary to Appellants' arguments regarding the characterization of DCP's citywide analysis of mechanical spaces, the Owner notes that DCP's *Residential Mechanical Voids Findings* and the record in *15 East 30th Street* both demonstrate with ample examples that mechanical spaces with similar heights to those in the New Building are "customarily found in connection" with the New Building's principal uses, and there is no reason to find

MINUTES

that “floor space used for mechanical equipment” contemplates an analysis of volume or height to be “clearly incidental” to a principal use under ZR § 12-10; and

WHEREAS, accordingly, the Owner submits that mechanical spaces in the New Building complied with the Zoning Resolution in effect before May 29, 2019, under the Board’s interpretation set forth in *15 East 30th Street*; and

Owner: Bulk Distribution

WHEREAS, the Owner states that the New Building’s zoning lot complies with bulk-distribution regulations applicable in the Special District; and

WHEREAS, the Owner states that the Zoning Resolution provides that “[w]ithin the Special District, at least 60 percent of the total floor area permitted on a zoning lot shall be within stories located partially or entirely below a height of 150 feet from curb level,” ZR § 82-34; and

WHEREAS, the Owner states that the New Building’s zoning lot complies with this provision because the total floor area allowed on the subject zoning lot is 548,543 square feet, comprised of 421,260 square feet (12.0 FAR) in the C4-7 zoning district and 127,283 square feet (6.5 FAR) in the R8 zoning district; and

WHEREAS, the Owner states that ZR § 82-34 applies to all zoning lots in the Special District, regardless of underlying zoning district designations, so 60 percent of the total floor area on the subject zoning lot (329,126 square feet) must be located below 150 feet above curb level; and

WHEREAS, the Owner states that, because the DOB-approved drawings for the New Building reflect “at least 60 percent of the total floor area . . . below a height of 150 feet from curb level,” the New Building’s zoning lot complies with ZR § 82-34; and

WHEREAS, the Owner states that Appellants’ argument that ZR § 82-34 only applies to the portion of the subject site within a C4-7 zoning district is unpersuasive because ZR § 82-34 applies to zoning lots throughout the entire Special District, regardless of the underlying district designations, because ZR § 82-34 states “[w]ithin the Special District” without qualification; and

WHEREAS, the Owner states that Appellant’s argument that the Zoning Resolution’s split-lot provisions require bulk calculations by zoning district is unavailing because the split-lot provisions apply “on a regulation-by-regulation basis,” *Beekman Hill Ass’n v. Chin*, 274 A.D.2d 161 (1st Dep’t 2000); and

WHEREAS, the Owner states that ZR § 82-34 applies with equal force in the portion of the subject site in the C4-7 zoning district as in the R8 zoning district—so the New Building’s zoning lot is not treated as a split lot with respect to ZR § 82-34; and

WHEREAS, the Owner states that, on the other hand, because tower-coverage regulations differ for the portion of the subject site in the C4-7 zoning district from the R8 zoning district, the New Building’s zoning lot is treated as a split lot for the purposes of tower-coverage regulations under ZR § 82-36, which does not apply to the portion of the subject site in an R8 zoning district, *see also* ZR § 33-48;

and

WHEREAS, the Owner states that it is undisputed in this appeal that, the zoning lot is a split lot for purposes of the tower-coverage regulations, and the New Building complies with the applicable tower-coverage regulations; and

WHEREAS, the Owner states that Appellant’s argument that “[w]ithin the Special District” is a reference to tower-on-a-base regulations of ZR § 23-651 is unpersuasive because tower-on-a-base regulations do not apply in C4-7 zoning districts; because there are major differences between tower-on-a-base regulations and ZR § 82-34, such as the absence in the Special District’s bulk-distribution regulations of applicability only to wide-street frontage; ZR § 82-34 contains no cross reference to ZR § 23-651 or other manner of incorporation or modification; while, in contrast to ZR § 82-34, ZR § 82-36 specifically modifies the tower regulations set forth in ZR §§ 33-45, 35-64 and 23-65; and

WHEREAS, the Owner states that Appellants’ arguments that the legislative history of the Special District mandates the concurrent operation of ZR §§ 82-24 and 82-36 is unavailing because the six development sites studied by the Department of City Planning in the C4-7 zoning district are irrelevant to the application of the ultimately adopted regulations; because the City Planning Commission further noted that the ultimately adopted regulations “would sufficiently regulate the resultant building form and scale even in the case of development involving zoning lot mergers”; and because the legislative history materials characterize ZR §§ 82-34 and 82-36 as “complementary,” not inextricably linked; and

WHEREAS, the Owner states that, ultimately, Appellants take issue with the Zoning Resolution as it exists, which is beyond the purview of this appeal; and

WHEREAS, in post-hearing submissions, the Owner notes that the Zoning Resolution explicitly defines its provisions’ applicability, indicating that “[w]ithin the Special District” means what it says: ZR § 82-34 applies throughout the entire Special District; and

WHEREAS, in support of this contention, the Owner notes numerous other instances where the Zoning Resolution qualifies its provisions’ applicability in the Special District—such as to certain subdistricts, certain street frontages, certain zoning districts and certain enumerated exceptions—indicating that the absence of similar qualification in ZR § 82-34 indicates that the bulk-distribution regulations do apply throughout the Special District; and

WHEREAS, the Owner states that there is no qualification in ZR § 82-34 that it only applies to towers and not to development subject to height-and-setback regulations, such as the portion of the New Building located in the R8 zoning district; and

WHEREAS, the Owner states that there is no merit to Appellants’ contention that “[w]ithin a Special District” merely highlights the minor differences between ZR § 23-651 and ZR §§ 82-34 and 82-36 because, when the Zoning

MINUTES

Resolution modifies underlying zoning district regulations, it specifically states so through the use of cross references; and

WHEREAS, the Owner states that, unlike ZR § 23-651, ZR §§ 82-34 and 82-36 are separate sections in the Zoning Resolution that are applied separately and do not, by their express language, apply to the same zoning districts; and

WHEREAS, the Owner states that, because the language of the text of ZR § 82-34 is clear and unambiguous, its plain meaning constitutes the best evidence of legislative intent, and no examination of legislative history is necessary to determine legislative intent; and

WHEREAS, the Owner states that, notwithstanding the clarity of the text, Appellants' analysis of the legislative history is fatally flawed because soft sites studied in conjunction with the 1994 amendments do not override ZR § 82-34's applicability throughout the Special District, because the predictability of the 1994 text amendments' applicability was the subject of wide dispute and because any unpredictable—but lawfully compliant—results must be addressed legislatively by amending the Zoning Resolution; and

WHEREAS, the Owner states that, contrary to Appellant's contention that DOB's interpretation of ZR § 82-34 increases the height of the New Building, the height of the New Building is actually reduced by having 60 percent of its total floor area located below 150 feet above curb level, and ZR § 82-34 operates as intended, even if not to the extent Appellants would prefer; and

WHEREAS, in support of this contention, the Owner provided comparative architectural diagrams showing that, without the Special District's bulk-distribution regulations, a 43-story, 839-foot tower could be developed on the subject zoning lot or a 30-story, 470-foot community-facility tower could be built in the R8 portion of the subject zoning lot; however, with the Special District's bulk-distribution regulations, only the 39-story, 775-foot New Building on the subject zoning lot or a 350-foot, 22-story community-facility tower in the R8 portion of the subject zoning lot are allowed; and

WHEREAS, the Owner states that, additionally, the Zoning Resolution contains no express limitation on the number of stories permitted in the Special District, and the City Planning Commission specifically rejected a special-district-wide height limitation of 275 feet; and

WHEREAS, accordingly, the Owner submits that the New Building's zoning lot complies with bulk-distribution regulations applicable in the Special District and that this appeal should be denied; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments on appeal but finds them ultimately unpersuasive; and

WHEREAS, in response to concerns from Appellants and the community regarding the height of development within the City, the Board notes that, while it has the power "to hear and decide appeals from and to review

interpretations of this Resolution" under ZR § 72-01(a), the Board does not have the power to zone, *see* City Charter § 666; and

WHEREAS, accordingly, insofar as Appellants or members of the community take issue with provisions of the Zoning Resolution—or absence thereof—as enacted, that grievance falls outside the scope of the Board's authority to review this appeal; and

WHEREAS, based on the foregoing, the Board finds that Appellants have not substantiated a basis to warrant departure from its decision in *15 East 30th Street* in that the Zoning Resolution in effect prior to May 29, 2019, did not regulate the floor-to-ceiling heights of "floor space used for mechanical equipment" in exempting such mechanical space from floor-area calculations, ZR § 12-10, and the Board finds that Appellants have failed to demonstrate that the Zoning Resolution treats the New Building's zoning lot as a split lot with respect to the Special District's bulk-distribution regulations and that Appellants have failed to demonstrate that the New Building's zoning lot does not comply with bulk-distribution regulations applicable in the Special District under ZR § 82-34.

Therefore, it is Resolved, that the building permit issued by the Department of Buildings on June 7, 2017, as amended and reissued April 11, 2019, under New Building Application No 121190200, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, September 17, 2019.

2019-94-AII

APPLICANT – Landmark West, for West 66th Sponsor LLC c/o Paul Hastings LLP, owner.

SUBJECT – Application May 13, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 11, 2019. C4-7 and R8 Special Lincoln Square District.

PREMISES AFFECTED – 36 West 66th Street aka 50 West 66th Street, Block 1118, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for decision, hearing closed.

MINUTES

2017-147-A and 2018-183-A

APPLICANT – Beni Rachmanov/Owners of Block 6619, for Mable Assets LLC, owner; Sholom Sholom Inc., lessee.
SUBJECT – Application May 15, 2017 and November 20, 2018 – Appeal of a NYC Department of Buildings denial. C1-2/R4 zoning district.

PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, the building permit issued by the Department of Buildings (“DOB”), issued on April 8, 2016, Alteration Type I Application No. 421196921 (the “Permit”), permits the alteration of an existing building resulting in a vertically and horizontally enlarged three-story building containing a Use Group 6A “Retail Store,” a Use Group 3A “Nursery” (for children ages 6 months to 2 years), and a Use Group 3A “Day Care” (for children from ages 2 years to 6 years); and

WHEREAS, this is an appeal for interpretation, under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought by Beni Rachmanov (the “Appellant”), alleging errors in and seeking complete revocation of the Permit for failure to comply with Building Code and zoning requirements relating to easements, zoning district boundaries, open area, and height; and

Applicable Provisions

WHEREAS, ZR § 33-48 states:

“Special Provisions for Zoning Lots Divided by District Boundaries

C1 C2 C3 C4 C5 C6 C7 C8

In all districts, as indicated, whenever a *zoning lot* is divided by a boundary between districts, or is subject to other regulations resulting in different height and setback regulations, or whenever a *zoning lot* is divided by a boundary between a district to which the provisions of Section 33-45 (Tower Regulations) apply and a district to which such provisions do not apply, the provisions set forth in Article VII, Chapter 7, shall apply”; and

WHEREAS, ZR § 33-293 states:

“Required yards along district boundary coincident with side lot line of zoning lot in a Commercial District

C1 C2 C3 C4 C5 C6 C7 C8

In all districts, as indicated, along such portion of a *side lot line* of a *zoning lot* in a *Commercial District* that coincides with a *rear lot line* of a *zoning lot* in an adjoining *Residence District*, an open area at *curb level* of at least the width set forth in the following table shall be provided along such boundary within the *Commercial District*. Such an open area shall not be used for *accessory* off-street loading, or for storage or processing of any kind”; and

WHEREAS, ZR § 33-25 reads:

Minimum Required Side Yards

C1 C2 C3 C4 C5 C6 C7 C8

In all districts, as indicated, no *side yards* are required. However, if an open area extending along a *side lot line* is provided at any level, it shall be either:

- (a) at least eight feet wide at every point; or
- (b) at least five feet wide at every point, with an average width of eight feet, such average being the mean of the width of the open area at its narrowest point and its width at its widest point, provided that:
 - (1) such widest point shall be on a *street line*;
 - (2) no portion of a *building* shall project beyond a straight line connecting such two points; and
 - (3) in the case of a *zoning lot* bounded by a *side lot line* extending from *street* to *street*, such average shall be computed and such open area shall be provided as though each half of such *side lot line* bounded a separate *zoning lot*.

Permitted obstructions pursuant to paragraph (a) of Section 33-23 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), shall be permitted in such open areas.

WHEREAS, ZR § 33-01 reads in pertinent part:

Applicability of this Chapter

The bulk regulations of this Chapter apply to commercial buildings, community facility buildings or buildings used partly for commercial use and partly for community facility use, on any zoning lot or portion of a zoning lot located in any Commercial District, including all developments or enlargements; and

WHEREAS, ZR 12-10 reads in pertinent part:

Open Space

“Open space” is that part of a *zoning lot*, including *courts* or *yards*, which is open and unobstructed from its lowest level to the sky

1 Words in *italics* are defined by Section 12-10 of the Zoning Resolution.

MINUTES

and is accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*.

Open space may, however, include areas covered by roofs, the total area of which is less than 10 percent of the unroofed or uncovered area of a *zoning lot*, provided that such roofed area is not enclosed on more than one side, or on more than 10 percent of the perimeter of the roofed area, whichever is greater.

Open space may be provided on the roof of:

- (a) a *community facility building*;
- (b) a *building* containing *residences*, provided such roof area is not above that portion of such *building* that contains *dwelling units* or *rooming units*;
- (c) a *non-residential building*, other than a *community facility building*, provided such *non-residential building abuts* other *buildings*, any one of which contains *residences*"; and

WHEREAS, ZR 33-431 reads in pertinent part:

"For *community facility buildings* or *buildings* used for both *community facility use* and *commercial use*, when mapped within R4, R5, R5A or R5B Districts, the maximum height of a front wall shall be 35 feet or three *stories*, whichever is less, and the height above *street line* shall be 35 feet and, when mapped within R7-2 Districts, the maximum height of a front wall shall be 60 feet or six *stories*, whichever is less"; and

WHEREAS, ZR 33-42 reads in pertinent part:

In all *Commercial Districts*, the following obstructions shall be permitted and may thus penetrate a maximum height limit or *sky exposure planes*, as set forth in Sections 33-43 (Maximum Height of Walls and Required Setbacks), 33-44 (Alternate Front Setbacks) or 33-491 (Limited Height Districts):

[. . .]

- (f) . . . However, such restrictions on location shall not apply to elevator or stair bulkheads (including shafts or vestibules), provided the *aggregate width of street walls* of such bulkheads within 10 feet of a *street wall*, facing each *street frontage*, times their average height, in feet, does not exceed an area equal to four times the width, in feet, of the *street wall* of the *building* facing such *frontage*"; and

Procedural History

WHEREAS, the subject site is located on the west side of Main Street, between 71st Road and 71st Avenue, within a C1-2 (R4) zoning district, in Queens; and

WHEREAS, the subject site has approximately 64 feet

of frontage along Main Street, 100 feet of depth, 5,428 square feet of lot area, and is proposed to be occupied by a three-story plus cellar mixed-use commercial (first floor) and community facility (second and third floors) building; and

WHEREAS, the Department of Buildings issued the Permit on April 8, 2016, and the Appellant submitted challenges questioning the approval of its issuance; in response, DOB, from May 2, 2016 to October 15, 2018, issued notices of intent to revoke the Permit and approvals along with associated objections; in response to the various objections and Notices of Intent to Revoke the Permit; after the Permit applicant made several revisions, DOB granted approval on April 6, 2018, and the final application was signed off on March 14, 2019, and, on March 18, 2019, DOB issued a certificate of occupancy; and

WHEREAS, on May 15, 2017, the Appellant filed BSA Cal. No. 2017-147-A, and on November 20, 2018, the Appellant filed BSA Cal. No. 2018-183-A, and seeks a determination revoking the Permit and certificate of occupancy; and

WHEREAS, a public hearing was held on this application on May 21, 2019, after due notice by publication in *The City Record*, with a continued hearing on September 17, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and Issues Presented

WHEREAS, the issue before the Board is whether the Appellant has demonstrated that DOB erred in issuing the permit with respect to determinations made regarding easements, zoning district boundaries, open space, and height; and

WHEREAS, accordingly, the Board considers the Appellant's arguments with respect to whether (i) zoning lot is divided by district boundary lines, (ii) the building complies with zoning requirements for open area along its southern lot line, and (iii) the height of the building complies with underlying zoning requirements; and

Appellant's Position

WHEREAS, the Appellant alleges that DOB erred in finding proper egress and access to a public way through the right of way easement; and

WHEREAS, the Appellant alleges that a private right way should not be used for an exit discharge; and

WHEREAS, the Appellant alleges that restrictions on "processing," as mentioned in ZR § 33-293, should also bar means of egress, parking, drop offs, and storage, and, as such, should not serve to provide compliance egress; and

WHEREAS, the Appellant alleges that DOB erred in applying the Zoning Resolution provisions and improperly issued the permit as the subject site is located in a split zoning lot, some of which lies within the R4 zoning district when the district boundary line is measured from the sidewalk; and

WHEREAS, the Appellant alleges that DOB erred in

MINUTES

requiring no open space along the southern side lot line and ZR § 33-25 requires eight feet of open space at every point from grade to the sky; and

WHEREAS, the Appellant alleges that the *City Environmental Quality* (“CEQR”) *Technical Manual* provides that open space that is not publicly accessible or is available only to limited users and is not available to the public on a regular or constant basis is defined as “private” and, as such, the rooftop children’s playground cannot satisfy zoning requirements relating to required open space; and

WHEREAS, the Appellant alleges that DOB erred in issuing the permit as the building height and bulkhead exceed the maximum sky exposure plane in the subject zoning district; and

WHEREAS, the Appellant alleges that the Building is above the permitted three stories; and

WHEREAS, the Appellant alleges that the rooftop contains a surface area, at most, of 3,361 square feet, 33-1/3 percent of the area of the roof is 1,120 square feet, and, relying on Building Code definitions of structure, as opposed to zoning regulations relation to floor area, including the street front bulkhead (677 square feet), rear bulkhead (520 square feet), and parapet walls (617 square feet), the total of all structures calculated are at minimum 1,814 square feet and exceed 1,120 square feet; and

DOB’s Position

WHEREAS, the DOB argues that they properly issued the permit and this appeal should be denied; and

WHEREAS, the DOB states that the building contains one means of egress directly onto Main Street and one discharging through an easement area which leads to Main Street; the means of egress through the easement area complies with the exit discharge requirements of BC § 1027.6, as the easement area is an exit discharge and provides direct and unobstructed access to a public way (Main Street), thus, the building provides a sufficient means of egress; and

WHEREAS, the DOB argues that the means of egress through an easement area may at one time in the future be obstructed does not prevent DOB from finding a sufficient means of egress and there is no requirement for the owner to provide evidence that a hypothetical future violating condition would never occur; and

WHEREAS, the DOB argues that the subject site is not located within a split zoning lot, is entirely within zoning district boundaries, and the provisions of Article 7, Chapter 7 of the Zoning Resolution do not apply; and

WHEREAS, the DOB argues that the open area along the southern side lot line, measuring approximately eight feet by four feet, may be enclosed within the subject building by providing a doorway, and would increase the floor area by approximately 33 feet, and is a correctable error should the Permit applicant file an Alteration Type I application to reflect such amendment; and

WHEREAS, the DOB argues that the provisions of ZR §§ 33-291 and 33-293, apply to requirements relating to

yards at or below curb level; and

WHEREAS, the DOB states that ZR § 33-22 reads in pertinent part, “[i]n all Commercial Districts, the level of a *yard* or of a *rear yard equivalent* shall not be higher than *curb level*. However, this Section shall not be construed to require that natural grade level be disturbed in order to comply with this requirement”; and

WHEREAS, the DOB argues that because the grade levels have not been disturbed at all by the work done under the Permit, and since the subject building maintains the requisite open areas along the applicable side lot lines, the Zoning Resolution does not require disturbance of the yards to bring the areas to curb level and the building complies with zoning requirements relating to yards and open areas; and

WHEREAS, the DOB argues that the subject building is three, not four, stories high; and

WHEREAS, the DOB argues that the cellar, as per ZR § 12-10, does not count as a story and the roof is neither a story; and

WHEREAS, the DOB argues that BC § 504.3 states that structures on rooftops, including bulkheads and parapet walls less than four feet in height, “...shall not be included in the building height of the building or considered an additional story unless the aggregate area of all such structures exceeds 33 1/3 percent of the area of the roof...”; and

WHEREAS, the DOB argues that the subject building’s rooftop has 3,640 square feet of area and proposed structures on the roof (the street front bulkhead, the rear bulkhead, and the parapet walls) cover an aggregate area of 741.5 square feet—significantly less than the 33-1/3 percent of the area of the roof (1213 square feet)—and the roof does not count as a story; and

WHEREAS, the DOB argues that the building contains a single elevator and stair bulkhead located within ten feet of the street wall which penetrates the sky exposure plane, but satisfies the conditions of ZR § 33-42(f) and are permitted obstructions; and

WHEREAS, the DOB argues that the bulkhead, extends nine feet in average height above the third floor roof, penetrates approximately four feet above the height of the start of the sky exposure plane at 35 feet, the street wall width of the Building is 53.30 feet while the street wall width of the obstruction is 17 feet; and

WHEREAS, the DOB argues that pursuant to ZR 32-42(f), the bulkhead street wall frontage (17 feet) times the average height of the penetrating bulkhead (4 feet) is approximately 68 square feet, which is less than four times the width of the Building street wall (53.30 feet), or 213.20 square feet, and, accordingly, the elevator and stair bulkheads, are permitted obstructions pursuant to ZR § 33-42(f); and

WHEREAS, the DOB argues that the children’s rooftop playground is not open space, as defined by ZR § 12-10, and, as such, is not required to comply with zoning requirements related to *open space*; and

MINUTES

WHEREAS, the DOB argues that ZR § 12-10 requires *open space* be “accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*”; and

WHEREAS, the DOB argues that the Building is a mixed-use commercial and community facility building, does not propose any residential dwelling or rooming units, and does not have any zoning open space requirements relating to the rooftop playground; and

WHEREAS, the DOB argues that the utilization of a CEQR term to redefine *open space*, a term already defined in the Zoning Resolution, is improper, as the Zoning Resolution contains a full definition of the term open space, CEQR focuses on the general public’s accessibility to land that has been set aside for the protection or enhancement of the natural environment, and the utilization of a CEQR term to redefine a term already defined in the ZR is improper and does not trigger CEQR analysis; and

Discussion

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” the Zoning Resolution; and WHEREAS, the Board has reviewed and considered—but need not follow—DOB’s interpretation of the Zoning Resolution in rendering the Board’s own decision in this appeal, and the standard of review in this appeal is *de novo*; and

WHEREAS, the Board nonetheless finds that Appellant has failed to demonstrate that the Permit was not validly issued and should be revoked; and

WHEREAS, the Appellant has presented no basis to conclude that the easement area used for egress is obstructed or remains impeded, or is used for “processing,” and the Board defers to DOB as this is an enforcement issue within the province of the Department of Buildings; and

WHEREAS, as to the zoning district boundaries, the provisions of ZR § 77-00, “Special Provisions for Zoning Lots Divided by District Boundaries,” do not apply; and

WHEREAS, the subject site is located in a C1-2 within R4 zoning district, with a depth shown as 90 feet from 71st Road; and

WHEREAS, ZR § 76-132 states “[i]n case of parallel streets, where a boundary line extends parallel to the long dimension of the block and no dimension is shown, such boundary line shall be considered to coincide with the center line of the block”; and

WHEREAS, pursuant to ZR § 76-132, the boundary line at the subject site that coincides with the center line of the block is 90 feet from 71st Road, with the measurements taken from “street line,” not the street edge of sidewalk curb as the appellant suggests; and

WHEREAS, tax lot 132 falls entirely within 90 feet of the street line of 71st Road and, as such, the subject site sits wholly within the C1-2 overlay in the R4 zoning district; and

WHEREAS, as to open areas, pursuant to ZR § 33-25,

with the subject C1-2 zoning district, no side yards are required; and

WHEREAS, the Zoning Resolution distinguishes between yards and open area, which is an undefined term; and

WHEREAS, ZR § 33-25 does not require, but permits, a yard within the subject C1-2 zoning district subject to restrictions, and, as such, an eight-foot side yard is not required along the southern side lot line; and

WHEREAS, the open area along the southern side lot line may be enclosed within the subject building by providing a doorway, is a correctable error, and the Permit must applicant file an Alteration Type I application to reflect such amendment; and

WHEREAS, as an open area is provided along the northern side lot line, though none is required, ZR § 33-293 applies; and

WHEREAS, pursuant to ZR § 33-293, the northern side lot line must provide with at least 8' open area at curb level and a 10' open area is provided at the subject site coincident with a right of way; and

WHEREAS, as the open area along the northern side lot line is also a side yard, the level of yard rules set forth in ZR § 33-22 apply, and such open area shall not be higher than curb level; and

WHEREAS, the rear lot line, shared with side lot line, must comply with ZR § 33-291 with a minimum of eight feet of depth of open space “not higher than curb level”; and

WHEREAS, the Zoning Resolution does not require the disturbance of the subject site’s natural grade; and

WHEREAS, the right of way is at natural grade and should not be disturbed to meet side yard open area requirements; and

WHEREAS, the Building is a non-residential community facility building and does not have an open space requirement; and

WHEREAS, pursuant to ZR § 12-10, the cellar is not a story and the building is three, not four, stories in height; and

WHEREAS, the roof is not a story, as defined by the Zoning Resolution, and CEQR provisions and definitions relating to the roof and open space are of no import as the building is as of right and is not subject to environmental review under CEQR or SEQRA; and

WHEREAS, as to height, the sky exposure plane is measured from the “street line,” and the subject zoning district permits a maximum height of 35 feet above the street line;

WHEREAS, the elevator and stair bulkhead, as well as a maximum of four-foot-high parapet walls, are permitted obstructions, as per ZR §§ 33-42(f) and (j), and the subject building complies with the lesser of 35 feet or three stories restriction of ZR § 33-461; and

WHEREAS, including a four-foot-high parapet, the subject zoning district permits a total height of 39 feet and the subject building, including its parapet, does not exceed the maximum height; and

MINUTES

WHEREAS, lastly, the Board has considered all of the arguments raised by Appellant, many of which regard challenges to DOB objections that were accepted by DOB, but ultimately finds them to be without merit; and

Conclusion

WHEREAS, the Board finds that the Appellant has not substantiated a basis to demonstrate that the Permit is invalid and should be revoked.

Therefore, it is Resolved, that the Department of Buildings permit, issued on April 8, 2016, Alteration Type I Application No. 421196921, is hereby *upheld* and this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, September 17, 2019.

2019-1-A thru 2019-5-A

APPLICANT – Joseph Loccisano of Sanna & Loccisano Architects, P.C., for Nello Development Corporation, owners.

SUBJECT – Application January 4, 2019 – Proposed construction of five (5) two-family, two-story detached home not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 7, 11, 15, 19, 23 Nello Court, Block 7826, Lot Tent. 215, 216, 217, 218, 220, Borough Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda and Commissioner Ottley-Brown.....2

Negative: Chair Perlmutter, Commissioner Sheta, and Commissioner Scibetta.....3

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated December 18, 2017, acting on New Building Application Nos. 520367264, 520367273, 520367237, 520367246, and 520367255 read in pertinent part:

“GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of five two-family residences that do not front on a mapped street; and

WHEREAS, a public hearing was held on this application on July 16, 2019, after due notice by publication in *The City Record*, with a continued hearing on September

17, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application and raised concerns that waivers of GCL 36 are opportunities to defy zoning protections that ensure lower density and set controls for development that do not burden services and infrastructure; stated that the deliberate creation of private roads to squeeze in additional homes for the sole reason of enlarging profit does not validate the GCL hardship finding; and argued that private roads are not required to meet New York City criteria for width and parking, and once a private community is developed there is no oversight by any New York City or State agency for homeowners associations to maintain their obligations, to the end that private communities foster problems that involve their internal community and surrounding streets and communities; and

WHEREAS, the subject site is located on the northwest corner of Nello Court and Sprague Avenue, between Hylan Boulevard and Surf Avenue, in an R3X zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 211 feet of frontage along Nello Court, 140 feet of frontage along Sprague Avenue, 29,378 square feet of lot area, and is vacant; and

WHEREAS, tax lots 215 and 220 were formerly occupied by two residences fronting on Sprague Avenue, a mapped street, that were demolished by the applicant; and

WHEREAS, the applicant proposes to subdivide the subject site into five separate zoning lots and construct five two-family residences, accessed by a proposed private road, Nello Court, which is not duly placed on the official map of the City of New York; and

WHEREAS, Nello Court would have a width of approximately 34 feet and would be accessible from Sprague Avenue, a mapped street paved to a width of approximately 30 to 35 feet; and

WHEREAS, General City Law Section 36(2) reads in pertinent part:

“2. A city having a population of one million or more. . . . No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway, and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternately, unless the owner has furnished to the department of transportation of such city a performance bond

MINUTES

naming the city as obligee, approved by such department, to the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department. . . . *Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways*, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and *the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations*; and¹

WHEREAS, the site was previously occupied by existing residences fronting on Sprague Avenue, a mapped street; and

WHEREAS, the subject may be developed with two or three residences fronting on Sprague Avenue; and

WHEREAS, Sprague Avenue contains at least approximately 11 other lots that are of similar sizes to the two or three lots that may be developed on the subject site with residences fronting on Sprague Avenue, consistent with the typical lot frontage and depth found on Sprague Avenue; and

WHEREAS, in response to questions from the Board at hearing, the applicant briefed the applicability of area-variance standards; and

WHEREAS, for comparison, GCL § 81-b provides in pertinent part:

“4. Area variances. . . . (b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- (i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- (iii) whether the requested area variance is

substantial;

- (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.”; and

WHEREAS, the applicant represents that an as-of-right development of two or three lots fronting on Sprague Avenue would utilize approximately only 42 percent of the floor area available on the lot and, as such, would be out of context with the character of the neighborhood; and

WHEREAS, the lot configuration, represented as a deep, narrow lot, however, is typical of 11 other sites fronting on Sprague Avenue; and

WHEREAS, it was not demonstrated whether layouts of other dwellings in the neighborhood similar to those herein proposed were constructed as-of-right or, alternatively, occurred by a waiver through the BSA, Department of Buildings or are non-compliant conditions predating the adoption of the Zoning Resolution; and

WHEREAS, the benefit sought by the applicant, development of the site with residential dwellings, can feasibly be achieved through as-of-right development with dwellings fronting on the mapped street, Sprague Avenue, and does not require an area variance or other relief from the requirements of the General City Law; and

WHEREAS, the applicant’s claimed hardship, as-of-right development potential of the site resulting in two or three dwellings, versus the ability to develop five dwellings not fronting on a mapped street and fronting on the new proposed “Nello Court,” is a self-created hardship; and

WHEREAS, the proposed development fronting on Nello Court is not consistent with the nearby development and the benefit sought by the applicant, the development of residences, can be achieved with two or three as-of-right dwellings that conform to underlying zoning provisions and front on Sprague Avenue, a mapped street; and

WHEREAS, the proposed development is designed to require relief under GCL § 36, where development opportunities consistent with development of the area provide frontage on a mapped street are consistent with the character of the neighborhood and nearby properties; and

WHEREAS, at the subject site, the development of the site with dwellings fronting on a mapped street does not entail practical difficulty or unnecessary hardship; and

WHEREAS, the applicant argues that the dimensional characteristics of the site pose a practical difficulty and hardship in that development fronting on Sprague Avenue allows less than 50% of the lots and development capabilities, and states that, if three lots are developed fronting Sprague Avenue, the homes would be impractically deep and would be significantly out of context with the homes fronting Sprague Avenue and Loretto Street; and

¹ Emphasis added.

MINUTES

WHEREAS, the ability to develop all of the floor area available on a zoning lot is a choice, not an entitlement, afforded to the developer; and

WHEREAS, contrary to the applicant's assertion, the as-of-right lots could be developed to utilize all of the available floor area and comply with underlying bulk regulations, without requiring a waiver of the General City Law, in accord with the context of larger dwellings within the immediate vicinity of the site, including those on Sprague Court; and

WHEREAS, the Board is not evaluating the marketability of one potential development against another, but only whether the requirement that the dwellings front on a mapped street would entail practical difficulty or unnecessary hardship; and

WHEREAS, the Board does not agree that the ability to realize a greater development potential, through a waiver of the General City Law, constitutes practical difficulty or an unnecessary hardship; and

WHEREAS, the applicant, additionally, failed to demonstrate that the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, as required for a waiver of General City Law § 36; and

WHEREAS, the Board of Standards and Appeals is not a planning board with the authority to review and approve site plans, subdivisions or plats, as contemplated by General City Law §§ 27-a and 32; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is not eligible for relief under GCL § 36 and that the applicant has not substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* this application.

Adopted by the Board of Standards and Appeals, September 17, 2019.

2017-202-A

APPLICANT – Law Office of Steven Simicich, for Over Development, Ltd., owner.

SUBJECT – Application June 2, 2017 – Proposed construction of a two-family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3S (SHPD) zoning district.

PREMISES AFFECTED – 43 Cunard Avenue, Block 623, Lot 252, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for adjourned hearing.

2018-129-A

APPLICANT – Philip L. Rampulla, for Donna Marie Russo, owner.

SUBJECT – Application August 3, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District (Special Area “M”). PREMISES AFFECTED – 484F Sharrots Road, Block 7328, Lot 323, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, NA-1 zoning district.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.

SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.

PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, September 17, 2019.

MINUTES

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, September 17, 2019.

2018-95-BZ

CEQR #18-BSA-140K

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE THE GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 12, 2019, acting on Alteration Application No. 321787483, reads in pertinent part:

1. Lot coverage and floor area is contrary to ZR 23-142;
2. Minimum required front yard is contrary to ZR 23-45;
3. ...
4. Side setback for tall buildings is contrary to ZR 23-632;

5. Required parking is not provided contrary to ZR 36-21.

6. Aggregate street wall contrary to ZR 23-463.

7. Street Tree Planting contrary to ZR 26-41; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R5 (C2-3) zoning district, within the Special Ocean Parkway District, the conversion and enlargement of an existing building that would not comply with zoning regulations for lot coverage, floor area, front yards, side setbacks, parking, aggregate street-wall width, and street-tree planting, contrary to ZR §§ 23-142, 23-45, 23-632, 36-21, 23-463, and 26-41; and

WHEREAS, this application has been brought on behalf of HASC Center, a non-profit educational organization (the “Educational Facility”); and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, with continued hearings on April 23, 2019, July 16, 2019, and August 13, 2019, and then to decision on September 17, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the local council member submitted testimony in support of this application; and

WHEREAS, residents of the surrounding area submitted testimony and in support of this application, citing concerns with traffic and the residential character of the neighborhood; and

WHEREAS, the subject site is located on Avenue M, between McDonald Avenue and East 2nd Street, in an R5 (C2-3) zoning district, within the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the subject site has approximately 224 feet of frontage along Avenue M, 100 feet of frontage along McDonald Avenue, 100 feet of frontage along East 2nd Street, 22,400 square feet of lot area and is occupied by a two-story building under construction; and

WHEREAS, the applicant proposes to convert and enlarge the existing two-story building to a three-story community-facility building with 48,681 square feet of floor area (2.17 FAR), lot coverage of 78 percent, a front yard with a depth of 10’-8” along McDonald Avenue, no front yards along Avenue M or East 2nd Street, a side setback of 17’-9” above the second story, two accessory off-street parking spaces, aggregate street-wall width of 213’-4”, and 12 street trees; and

WHEREAS, the applicant notes that, at the subject site, lot coverage may not exceed 55 percent under ZR § 23-142, floor area may not exceed 29,822 square feet under ZR § 23-142, three front yards must have minimum depths of 10 feet under ZR § 23-45, a side setback progressing from 30 feet to 49 feet would be required above the second story under ZR § 23-632, a minimum of 45 off-street accessory

MINUTES

parking spaces are required under ZR § 36-21, aggregate street-wall width may not exceed 185 feet under ZR § 23-463, and 17 street trees under ZR § 26-41; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, the Board acknowledges that the Educational Facility, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the Educational Facility’s proposed enlargement is necessary to accommodate the Educational Facility’s programmatic needs and that the Educational Facility’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant provided a comprehensive report on the Educational Facility’s programmatic needs, demonstrating that the Educational Facility current operates its program out of five locations but needs to consolidate its operations to increase efficiency and the efficacy of its programs, and detailing the constraints the Educational Facility’s program would face with as-of-right development; and

WHEREAS, the Educational Facility’s program centers around the formulation of an enrollee’s life plan, a State requirement, which needs centralized confidential meeting space to allow key staff to participate on a frequent basis, and a habilitation program as either day habilitation or community habilitation, depending on enrollees’ life plans; and

WHEREAS, the Educational Facility further needs to provide full accessibility to its enrollees, which in turn necessitates larger spaces to accommodate wheelchairs; and

WHEREAS, an as-of-right development would not accommodate the Educational Facility’s program because it would require the elimination of agency maintenance, case management, community habilitation, human resources, information technology, mail, quality assurance, and training, which would need to locate off site and would negatively affect the effectiveness of on-site programming; and

WHEREAS, instead, the proposed building would accommodate the Educational Facility’s program—including day habilitation, vocational training, therapy,

community habilitation, case management, intake, and self-directed services, all in a centralized location—by allowing, among other things, classrooms with a flexible environment to accommodate various learning styles and with flexible barriers to facilitate larger group activities and more individualized activities; a computer lab; a sensory or quiet room to accommodate certain enrollees’ environmental needs; and private spaces for confidential life-planning and other sensitive meetings; and

WHEREAS, the report on the Educational Facility’s program needs also indicates that the proposed building allows the entire program to be located in a single building; that locating the day habilitation programs on a single floor allows space flexibility to use dining areas as a single-event space; that the adjacency of day habilitation programs reduces redundant services (such as laundry); and that the location of medical services and vocational training in the same building as day habilitation allows more efficient services and reduces potential transportation impacts caused by shuttling between separate facilities; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the Educational Facility is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the Educational Facility’s programmatic needs with adequate space, facilities, and organization; and

WHEREAS, the applicant submits that the proposed enlargement will not alter neighborhood character; and

WHEREAS, in support of this contention, the applicant supplied a study of the surrounding area, finding that the proposed community-facility use is consistent with the vibrant mix of surrounding land uses and that the proposed enlargement is consistent with the neighborhood’s built environment; and

WHEREAS, in particular, the applicant notes that the surrounding area includes elevated train tracks, four- to six-story residential buildings along with two- to three-story residential buildings, and industrial buildings; and

WHEREAS, with respect to street-wall width, the applicant submits that the originally proposed building includes stone water tables, planting, and a masonry design that minimizes the visual impact of the proposed building; and

WHEREAS, in response to questions from the Board at hearing, the applicant reduced the height of the proposed building to comply with applicable zoning regulations; and

WHEREAS, the applicant also provided a draft restrictive declaration to ensure that the proposed parking reduction will not negatively affect the surrounding area by providing a shuttle service running during peak hours to

MINUTES

facilitate employees' travel from the subject site to nearby off-street parking lots, while the two proposed accessory off-street parking spaces would ensure that the vans would always have parking available at the subject site during waiting periods; and

WHEREAS, in response to questions from the Board, the applicant revised the façade design to incorporate a variety of masonry treatment without a living wall, breaking up the apparent massing of the proposed building; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant notes that the proposed variance is the minimum necessary to allow productive use of the site, as reflected in the Educational Facility's report on programmatic needs; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 18BSA140K, dated July 31, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated January 24, 2018, the New York City Landmarks Preservation Commission represents the proposed project would not result in any potential for significant adverse impacts on architectural or archaeological resources; and

WHEREAS, by letter dated July 17, 2019, the New York City Department of Environmental Protection ("DEP") states that the proposed project would not result in any potential for significant adverse impacts with regard to air quality and that the proposed project would not result in any potential for significant adverse impacts with regard to noise on condition that the proposed project HVAC equipment be required to comply with the New York City Noise Code,

that a composite window-wall noise attenuation of 35 dBA be required for the northern, southern, and western building facades, and that an alternate means of ventilation is required and shall be incorporated into building design and construction; and

WHEREAS, by letter dated September 21, 2018, DEP states that it has reviewed the EAS and Phase I and determined that a Phase II Environmental Site Assessment is necessary to identify/characterize the subject site; and

WHEREAS, by letter dated July 16, 2019, DEP concurs with the July 11, 2019 memorandum's recommendation prepared on behalf of the applicant that an (E) designation (E-545) be placed on the site for hazardous materials pursuant to ZR § 11-15 for the subject site and states that the (E) designation shall ensure that testing and mitigation will be provided as necessary before any further development or soil disturbance; and

WHEREAS, further hazardous materials assessment shall be coordinated through the Office of Environmental Remediation; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R5 (C2-3) zoning district, within the Special Ocean Parkway District, the conversion and enlargement of an existing building that would not comply with zoning regulations for lot coverage, floor area, front yards, side setbacks, parking, aggregate street-wall width, and street-tree planting, contrary to ZR §§ 23-142, 23-45, 23-632, 36-21, 23-463, and 26-41; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received August 29, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 48,681 square feet of floor area (2.17 FAR), maximum lot coverage of 78 percent, a front yard with a minimum depth of 10'-8" along McDonald Avenue, no front yards along Avenue M or East 2nd Street, a side setback of at least 17'-9" above the second story, a minimum of two accessory off-street parking spaces, a maximum aggregate street-wall width of 213'-4", and at least 12 street trees, as illustrated on the Board-approved

MINUTES

drawings;

THAT shuttle bus services to the parking garage shall be provided in accordance with the terms of the restrictive declaration;

THAT a restrictive declaration shall be recorded against the property prior to the issuance of any building permit substantially conforming to the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated this ____ day of _____, 2019, is entered into by HASC Center, Inc. (the "Declarant"), a New York not-for-profit corporation having an office at 5601 1st Avenue Brooklyn, NY 11220.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, being known by the street address of 120 Avenue M, and designated as Block 6564, Lot 1 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the "Premises"); and

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2018-95-BZ (the "Application"), that the New York City Board of Standards and Appeals (the "Board") grant a variance, under New York City Zoning Resolution ("ZR") § 72-21, to permit the development of a new three-story building at the Premises contrary to ZR §§ 23-142 (floor area and lot coverage), 23-45 (front yard), 23-463 (aggregate width of street walls), 26-41 (required street trees), and 25-31 (parking) within an R5/C2-3 zoning district in the Special Ocean Parkway District (the "Proposed Development"); and

WHEREAS, the Board requires the Declarant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Application, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. Declarant shall provide a shuttle service from the Premises to nearby off-street parking facilities for Declarant's visitors and staff, which will operate with peak and off-peak hours;
2. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
3. The covenants set forth herein shall run with the land and be binding upon and inure to the

benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

4. If Declarant fails to perform any of its obligations under this Declaration, the Board shall give Declarant and any mortgagee of the Premises (the "Mortgagee") thirty (30) days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure.
5. If Declarant fails to cure such violation within such thirty (30) day period, the Board shall provide Mortgagee an additional thirty (30) days to effect a cure.
6. If Mortgagee cannot effect a cure within such thirty (30) day period, it may request up to four (4) additional thirty (30) day extensions from the Board. Such extensions from the Board will not be unreasonably conditioned or withheld, provided that Mortgagee demonstrates continued good-faith efforts to effect a cure.
7. Failure to effect such cure may result in the revocation of a building permit or Certificate of Occupancy, as well as any other authorization or waiver granted by the Board, including but not limited to, the Application; and
8. In the event that (a) the Declarant elects to abandon the Application or (b) the underlying zoning district is changed such that the relief provided by the Application is no longer required, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

IN WITNESS WHEREOF, Declarant has made and executed this Declaration as of the date hereinabove written;

THAT façade enhancements shall be installed and maintained as illustrated on the Board-approved drawings;

THAT landscaping and off-street parking for two vans shall be provided and maintained as illustrated on the Board-approved drawings;

THAT the proposed project HVAC equipment be required to comply with the New York City Noise Code;

THAT a composite window-wall noise attenuation of 35 dBA be required for the northern, southern, and western building facades;

THAT an alternate means of ventilation is required and shall be incorporated into building design and construction;

THAT an (E) designation (E-545) shall be maintained on the site to ensure proper hazardous materials remediation;

MINUTES

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-95-BZ”), shall be obtained within four (4) years, by September 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 17, 2019.

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 17, 2019.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for adjourned hearing.

157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for adjourned hearing.

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for adjourned hearing.

2017-265-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application September 8, 2017 – Reinstatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board’s rules. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd Avenue, Block 822, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for adjourned hearing.

MINUTES

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M. for continued hearing.

2018-168-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Cohen, owner.

SUBJECT – Application October 22, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-141); open space and lot coverage (ZR § 23-142); rear yard (ZR § 23-47), and side yard regulations (§§ 23-47 & 23-461)). R3-2 zoning district.

PREMISES AFFECTED – 1769 East 26th Street, Block 6809, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for continued hearing.

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 17, 2019
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2018-27-BZ

APPLICANT – Eric Palatnik, P.C., for Nathalie Vilinsky, owner.

SUBJECT – Application February 21, 2018 – Special Permit (§73-622) to legalize previous enlargement and further enlarge an existing single-family home contrary to ZR §23-142 (floor area and lot coverage) and ZR §23-47 (rear yard). R3-1 zoning district.

PREMISES AFFECTED – 16 Dover street, Block 8729, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2018-191-BZ

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

2019-6-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eastern Prelacy of the Armenian Apostolic Church, owner.

SUBJECT – Application January 9, 2019 – Variance (§72-21) to permit the enlargement of an existing house of worship (*Eastern Prelacy of the Armenian Apostolic Church*) contrary to ZR §24-11 (lot coverage and floor area ratio); ZR §§24-33 & 24-36 (permitted rear yard obstruction within a 30' required yard). R8 zoning district.

PREMISES AFFECTED – 138 East 39th Street, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

MINUTES

2019-23-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Karass Mulberry 290 LLC, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Martial Arts Family Studio) on portions of the cellar and first floor of an existing 11 story and cellar mixed use residential and commercial building contrary to ZR §32-10.

PREMISES AFFECTED – 290 Mulberry Street aka 41 East Houston Street, Block 590, Lot(s) 19 & 20, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

2019-157-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, Block 1436, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

2019-158-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, Block 1845, Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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October 12, 2019

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SHAMPA CHANDA, *Vice-Chair*

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NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|------------------------------|---------|
| DOCKET | 750 |
| CALENDAR of October 29, 2019 | |
| Morning | 751 |
| Afternoon | 751/752 |

CONTENTS

**MINUTES of Regular Meetings,
Thursday, October 3, 2019**

Morning Calendar753

Affecting Calendar Numbers:

| | |
|-----------------------------|--|
| 157-06-BZ | 28-56 Steinway Street, Queens |
| 227-09-BZ | 100-14 Roosevelt Avenue, Queens |
| 2017-97-BZ | 55 Washington Street, Brooklyn |
| 863-48-BZ | 259-16 Union Turnpike, Queens |
| 1715-61-BZ | 129-02 Guy Brewer Boulevard, Queens |
| 90-91-BZ | 630-636 City Island Avenue, Bronx |
| 188-96-BZ | 444 Soundview Avenue, Bronx |
| 55-97-BZ | 76-36 164 th Street, Queens |
| 2019-17-BZY | 30 West 39 th Street, Manhattan |
| 2019-175-A | 30 West 39 th Street, Manhattan |
| 2017-16-A thru 2017-19-A | 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Queens |
| 2018-105-A | 150-87 Clintonville Court, Queens |
| 2019-13-A & 2019-14-BZY | 11-31 Ryerson Street, Brooklyn |
| 2018-102-A | 241 Grand Street, Brooklyn |
| 2019-19-A | 107 Manee Avenue, Staten Island |
| 2019-43-A | 4132 Victory Boulevard, Staten Island |
| 2019-44-A | 4128 Victory Boulevard, Staten Island |
| 2019-46-A | 4124 Victory Boulevard, Staten Island |
| 2019-47-A | 4130 Victory Boulevard, Staten Island |
| 2018-143-BZ | 20 West 14 th Street, Manhattan |
| 2017-231-BZ | 765 Pennsylvania Avenue, Brooklyn |
| 2018-16-BZ | 974 Sacket Avenue, Bronx |
| 2018-167-BZ | 1133 East 22 nd Street, Brooklyn |
| 2019-40-BZ | 175-179 East 73 rd Street, Manhattan |

Afternoon Calendar762

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-150-BZ | 2215 Homecrest Avenue, Brooklyn |
| 2019-42-BZ | 6502 18 th Avenue, Brooklyn |
| 2019-79-BZ | 29 West 30 th Street, Manhattan |
| 2017-21-BZ | 34-38 38 th Street, Queens |
| 2018-172-BZ | 46-09 and 46-19 31 st Avenue, Queens |
| 2019-16-BZ | 250-01 Northern Boulevard, Queens |
| 2019-31-BZ | 525 West 26 th Street, Manhattan |
| 2019-59-BZ | 1417 Webster Avenue, Bronx |
| 2019-63-BZ | 120 West 72 nd Street, Manhattan |
| 2019-71-BZ | 2868 Fulton Street, Brooklyn |

DOCKETS

New Case Filed Up to October 3, 2019

2019-266-BZ

1498 Clove Road, Block 00661, Lot(s) 0019, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3X LDGMA R3X district.

2019-267-BZ

165-98 Baisley Boulevard, Block 12495, Lot(s) 0002, Borough of **Queens, Community Board: 12**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Crunch Fitness) within a large indoor shopping center (Rochdale Center) contrary to ZR §32-10 C4-2 zoning district. C4-2 district.

2019-268-BZ

1938 Coney Island Avenue, Block 6617, Lot(s) 0045, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1 parking category) contrary to ZR §36-21. C8-2 Ocean Parkway Special District. C8-2 district.

2019-269-BZ

3425 Rombouts Avenue, Block 5270, Lot(s) 0020, Borough of **Bronx, Community Board: 12**. Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district. M1-1 district.

2019-270-BZY

12-14 East 48th Street, Block 1283, Lot(s) 0011, Borough of **Manhattan, Community Board: 5**. C5-2.5 district.

2019-271-BZ

37 Mansion Avenue, Block 5190, Lot(s) 0085, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3-A Special South Richmond district. C3-A/SRD district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING OCTOBER 29, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, October 29, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

75-00-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Mercy Drive Inc., owner.

SUBJECT – Application May 30, 2019 – Extension of Term of a previously approve Variance (72-21) which permitted office use (UG 6B) which expires on July 25, 2020. R5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

343-12-BZ

APPLICANT – Slater & Beckerman, P.C., for Kolel Beis Yakov LLC, owner; Ocean Avenue Education Support, Inc., lessee.

SUBJECT – Application July 23, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a Use Group 3 school (Brooklyn School for Medically Frail Children) with dormitory facilities which expires on July 28, 2019. R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-239-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 47 Doty Avenue, Block 3124, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

2018-170-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Van Dam Specialty & Promotion Inc., owner; Clear Channel Outdoor, Inc., lessee.

SUBJECT – Application October 30, 2018 – Appeal of a NYC Department of Buildings determination that a sign does not comply with the provisions of ZR §42-55c.

PREMISES AFFECTED – 51-03 Van Dam Street, Block 305, Lot 17, Borough of Queens.

COMMUNITY BOARD #2Q

2019-172-A

APPLICANT – Eric Palatnik, P.C., for John Deluca and Lilian Deluca, owners.

SUBJECT – Application June 11, 2019 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior R3-2 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 10 Maguire Court, Block 6977, Lot 350, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING OCTOBER 29, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 29, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-91-BZ

APPLICANT – Klein Slowik PLLC, for LW Retail Associates, owner.

SUBJECT – Application May 17, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street a/k/a 79 Worth Street, Block 173, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

2019-9-BZ

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application January 18, 2019 – Variance (§72-21) to permit the construction of a new single family detached home, contrary to side yard and open area regulations, ZR §23-461(c), and front yard regulations, ZR §23-45. R3A zoning district.

PREMISES AFFECTED – 468 Targee Street, Block 647, Lot 73, Borough of Staten Island.

COMMUNITY BOARD #1SI

2019-21-BZ

APPLICANT – Sheldon Lobel, P.C., for Yanjun Luo, owner.

SUBJECT – Application January 25, 2019 – Special Permit (§73-622) to permit the enlargement and conversion of an existing single-family home to a two-family residence, contrary to FAR, open space and lot coverage (ZR §23-142); side yards (ZR §§23-461(a) and 23-48) and rear yard (§23-47). R4 zoning district.

PREMISES AFFECTED – 2223 East 14th Street, Block 7373, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-75-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 704 Broadway Realty LLC, owner; Bright Horizons Children’s Centers LLC, lessee.

SUBJECT – Application April 12, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (*Bright Horizons Child Care Center*) to be located on the first floor, mezzanine and cellar of an existing eight story building contrary to ZR §42-10. M1-5B NoHo Historic District.

PREMISES AFFECTED – 704 Broadway, Block 545, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #2M

2019-161-BZ

APPLICANT – Law Office of Jay Goldstein, for RFR/K Prospect Owner LLC, owner; Catmar Dumbo LLC, lessee.

SUBJECT – Application May 30, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*F45 Training Dumbo*) on portions of the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

2019-163-BZ

APPLICANT – Law Office of Jay Goldstein, for EM Real Estate LLC, owner; Bar Nala NYC LLC, lessee.

SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bar Method) on the second floor of an existing building contrary to ZR 42-10. M1-5B Noho Historic District.

PREMISES AFFECTED – 678 Broadway, Block 530, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

2019-164-BZ

APPLICANT – Law Office of Jay Goldstein, for 9 E 16 by 1771 Holdings LLC, owner; Change Your Life LLC, lessee.

SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Grit Boxing) on portions of the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A Ladies Mile Historic District.

PREMISES AFFECTED – 9 East 16th Street (9-11 East 16th Street), Block 844, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

2019-178-BZ

APPLICANT – Jay Goldstein, Esq., for Yosef and Rivka Goldfeder, owners.

SUBJECT – Application October 29, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area and open space ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1426 East 24th Street, Block 7677, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
THURSDAY MORNING, OCTOBER 3, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

157-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 2856 Astoria LLC, owner; TSI Astoria LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) on the first and second floor of a three-story commercial building which expired on February 27, 2017; Waiver of the Rules. C4-2A and C2-2/R6 zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, Block 662, Block 41, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Reopened and closed.

Adopted by the Board of Standards and Appeals, October 3, 2019.

227-09-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero/Chris Realty Holding Corp., owner.

SUBJECT – Application February 4, 2019 – Extension of Time to complete construction of a previously approved Variance (§72-21) permitting the construction of a two-story commercial building, contrary to use regulations (§22-10) which expired on August 16, 2015; Waiver of the Board's Rules. C1-4 Zoning District.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, formerly 100-16 Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, October 3, 2019.

2017-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 55 Washington Street LLC, owner; Gleason's Gym, lessee.

SUBJECT – Application August 12, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Gleason's Gym) which expired on October 31, 2018; Waiver of the Board's Rules. M1-2/R8A zoning district.

PREMISES AFFECTED – 55 Washington Street, Block 38, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on October 31, 2018; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is bounded by Washington Street to the west, Water Street to the north, Adams Street to the east and Front Street to the south, in an M1-2/R8A zoning district and in the Special Mixed Use District and DUMBO Historic District, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Washington Street, 181 feet of frontage along Water Street, 212 feet of frontage along Adams Street, 232 feet of frontage along Front Street, 42,832 square feet of lot area and is occupied by a nine- (9) story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 31, 2017, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a physical culture establishment ("PCE") (operated as Gleason's Gym), on the first floor of a nine- (9) story commercial building, on condition that all work substantially conform to drawings filed with the application; the term of the grant be for ten (10) years, expiring December 1, 2026; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum 3'-0" wide exit pathways be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm system—

MINUTES

including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—be maintained in the entire PCE space and the PCE be fully sprinklered, as indicated on the Board-approved plans; sound attenuation be installed in the PCE as indicated on the Board-approved plans; Local Law 58/87 shall be complied with as approved by DOB; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by October 31, 2018; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Gleason's Gym, and the PCE continues to occupy 9,667 square feet of floor area on the first floor, as previously approved by the Board; and

WHEREAS, the applicant provided a detailed timeline, covering the period from June 2018 through August 2019, demonstrating the attempts to obtain a certificate of occupancy; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, dated October 31, 2017, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to obtain a certificate of occupancy of two (2) years, expiring October 31, 2020; *on condition*:

THAT the term of the PCE special permit shall expire on December 1, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment

without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2017-97-BZ"), shall be obtained by October 31, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, October 3, 2019.

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.

SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

MINUTES

1715-61-BZ

APPLICANT – Michael H. Choi, Esq., for Kun Kwon Kim and Won Kil Kim, owners.

SUBJECT – Application April 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a dry-cleaning establishment (UG 6A) which expired on June 5, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on September 14, 2011; Waiver of the Board’s Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy Brewer Boulevard, Block 12276, Lot 59, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming use with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment is for a modification of the interior layout and sizes of the commercial units, and a modification in the number of accessory parking spaces from the previous approval; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

188-96-BZ

APPLICANT – Eric Palatnik, P.C., for William McCombs, owner.

SUBJECT – Application November 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on January 6, 2018; Amendment (§11-412) to permit the enlargement of the accessory building, provide new pump islands and install a canopy; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to October 22, 2019, at 10 A.M., for continued hearing.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Baker Tripi Realty Corporation, owner; Brendan’s Service Station, lessee.

SUBJECT – Application February 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Establishment (UG 16B) which expired on September 23, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on March 15, 2010; Waiver of the Board’s Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 76-36 164th Street, Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

APPEALS CALENDAR**2019-17-BZY**

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.

SUBJECT – Application January 22, 2019 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-6 zoning district.

PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, October 3, 2019.

MINUTES

2019-175-A

APPLICANT – Duval & Stachenfeld LLP, for 26 West 39th LLC, owner.

SUBJECT – Application June 18, 2019 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaptation of a zoning text amendment on December 20, 2018. M1-6 zoning district.

PREMISES AFFECTED – 30 West 39th Street, Block 840, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 122985029 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment; and

WHEREAS, a public hearing was held on this application on August 6, 2019, after due notice by publication in *The City Record*, and then to decision on October 3, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of West 39th Street, between Avenue of the Americas and Fifth Avenue, in an M1-6 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 88 feet of frontage along West 39th Street, 25 feet of frontage along West 38th Street, 198 feet of depth, 11,159 square feet of lot area and is to be occupied by a 27-story, with cellar, commercial building for use as a transient hotel (the “Hotel Building”); and

WHEREAS, on February 8, 2018, DOB determined that the Hotel Building would comply with all applicable zoning regulations and issued building permits authorizing work associated with the New Building Application beginning in July 2018 and culminating in the issuance of a new-building permit on October 31, 2018; and

WHEREAS, by letter dated April 8, 2019, DOB represents that building permits associated with the New Building Application were lawfully issued; and

WHEREAS, effective December 20, 2018 (the “Effective Date”), the City amended the Zoning Resolution such that use of the Hotel Building as a transient hotel is no

longer permitted as of right, *see* ZR §§ 42-111, 42-32, and 74-803; and

WHEREAS, because not “all work on” the Hotel Building’s “foundations had been completed prior to” the Effective Date, the building permits authorizing work associated with the New Building Application “automatically lapse[d]” on the Effective Date and “the right to continue construction . . . terminate[d],” ZR § 11-331; and

WHEREAS, accordingly, the applicant seeks to establish the right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the New Building Application; and

WHEREAS, “[u]nder New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see generally Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”); and

WHEREAS, notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted); and

WHEREAS, as noted above, the record shows that the owner of the subject site obtained lawfully issued permits to construct the Hotel Building in accordance with the New Building Application before the Effective Date; and

WHEREAS, the applicant submitted evidence that, before the Effective Date and in accordance with the building permits authorizing work associated with the New Building Application, the owner had effected substantial construction to further development of the Hotel Building; and

WHEREAS, in particular, the applicant submits that excavation work for the New Building had been completed by the Effective Date, including removal of all soil (approximately 10,000 cubic feet with a minor amount replaced along West 38th Street to form a staging ramp that provides construction access to the New Building’s foundations); and

WHEREAS, the applicant notes that the following

MINUTES

foundation work had been completed by the Effective Date: “18 of 18 soldier piles at the street line on the 39th Street side; 4 of 4 soldier piles at the street line of the 38th Street Side; 48 of 48 underpins; 28 of 28 street tiebacks; 10 of 10 soil tiebacks; 100% of lagging at the street line completed; 100% of the walers and corn braces for street and sidewalk reinforcement installed; 80% of the rat slab poured; full rebar release and 15% of steel delivered to the site; [and] 19 East 38th Street lot regraded and ramped for use as a staging area for deliveries and machinery”; and

WHEREAS, the applicant submitted evidence that this construction represents 93 days—out of a total projected 686 days—of work required to complete the Hotel Building; and

WHEREAS, in response to questions from the Board at hearing, the applicant supplied additional evidence of construction progress prior to the Effective Date with daily photographs and further details about the amount of concrete used in the installed mat; and

WHEREAS, accordingly, the record reflects that, before the Effective Date and in accordance with the building permits authorizing work associated with the New Building Application, the owner had effected substantial construction to further development of the Hotel Building; and

WHEREAS, the applicant submitted evidence that, before the Effective Date, substantial expenses had been incurred, totaling approximately \$13 million (11.4 percent) of the total development cost of \$117 million; and

WHEREAS, the applicant notes that these costs include construction costs (excavation and foundation, site safety and security, dewatering, general conditions, generator, and construction-manager fee), financing costs and fees, soft costs (including for architect, engineer, and surveys), insurance, taxes, and an obligated termination fee; and

WHEREAS, assuming acquisition and demolition costs are properly included, the applicant submits that, as of the Effective Date, the owner had spent approximately \$61 million (39 percent) of the total development cost of \$156 million; and

WHEREAS, accordingly, the record reflects that, before the Effective Date, the owner had incurred substantial expenses to further development of the Hotel Building; and

WHEREAS, the applicant submitted evidence that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss—that is, substantial economic harm; and

WHEREAS, in particular, the applicant submits that redesigning the partially constructed Hotel Building into an office building would require a four-year delay (18 months for site design and permitting and 30 months for construction), would require redesign to use a side core instead of a central core (requiring redesign, partial demolition, and rebuilding of existing foundations), ultimately would lead to annual losses between \$1.9 million and \$5.9 million, totaling \$13 million in losses over a five-

year period, and would result in a sales price reduced to \$77 million, resulting in a total loss of approximately \$97 million; and

WHEREAS, in response to questions from the Board at hearing, the applicant submitted further evidence detailing the design differences between the Hotel Building and an office building—including the Hotel Building’s structural design with large concrete columns on an irregular column grid aligned with guest-room layouts and 9’-4” floor-to-floor heights versus an office building’s steel structural system that would allow flexible, open floor plans and maximum window exposure and 11’-0” to 12’-0” floor-to-floor heights; and

WHEREAS, the applicant supplied further financial evidence that redesigning the Hotel Building into an office building would include at least \$250,000 in hard costs to repurpose existing foundations and approximately \$5.3 million in soft costs for engineers, architects, consultants, and associated costs; and

WHEREAS, the applicant also submits that, over a seven-year period, redesigning the Hotel Building to an office building would result in a revenue loss of \$219 million and a net loss in cash flow of more than \$36 million (comparing total development costs) and, alternatively, a loss of more than \$51 million (comparing revenues, operating expenses, and net cash flow); and

WHEREAS, because of the substantial nature of the financial losses pertaining to redesigning the partially constructed Hotel Building into an office building set forth above, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein; and

WHEREAS, accordingly, the record reflects that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss in the form of substantial economic harm; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to *establish* the right to continue construction and to *renew* building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 122985029, before December 20, 2018, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four (4) years, expiring October 3, 2023.

Adopted by the Board of Standards and Appeals, October 3, 2019.

MINUTES

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2019-13-A & 2019-14-BZY

APPLICANT – Ross F. Moskowitz, Esq., for SDF 47 Ryerson Street, LLC, owner.

SUBJECT – Application January 18, 2019 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaptation of a zoning text amendment on December 20, 2018. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district.

PREMISES AFFECTED – 11-31 Ryerson Street, Block 1877, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

2018-102-A

APPLICANT – Sheldon Lobel, P.C., for K. Kurylo Corporation, owner.

SUBJECT – Application June 28, 2019 – To acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development, as issued originally on March 11, 2009 in connection with Permit No. 302156798-01-A1 in the then R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 241 Grand Street, Block 2382, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2019-19-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ashland Building LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 107 Manee Avenue, Block 6751, Lot 3260 (tent.) Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

2019-43-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Abdulhay NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4132 Victory Boulevard, Block 2636, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

2019-44-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Travis SI NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4128 Victory Boulevard, Block 2636, Lot 41, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

MINUTES

2019-46-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ARTANK43, LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 4124 Victory Boulevard, Block 2636, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

2019-47-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for YSE 39, LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 4130 Victory Boulevard, Block 2636, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2018-143-BZ

CEQR #19-BSA-030M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; Fithouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 22, 2018, acting on DOB Alteration Type I Application No. 123550291, reads in pertinent part:

“ZR 32-10, ZR 73-36; BSA: Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-2 zoning district and partially within a C6-2M zoning district, a physical culture establishment (“PCE”) on a portion of the cellar level and first floor (located entirely within the C6-2M portion of the lot) of an existing six- (6) story plus cellar and sub cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019, and October 3, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, recommended approval of this application; and

WHEREAS, the Board was also in receipt of testimony from residential tenants of the subject building in opposition to this application, citing concerns over noise and vibration disturbance caused by the operation of the PCE; and

WHEREAS, the subject site is bounded by West 14th Street to the north and West 13th Street to the south, between Avenue of the Americas and Fifth Avenue, partially within a C6-2 zoning district and partially within a C6-2M zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 14th Street, 125 feet of frontage along West 13th Street, 18,070 square feet of lot area and is occupied by an existing six- (6) story plus cellar and sub cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or

- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes

that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 2,488 square feet of floor space on a portion of the cellar level with two (2) exercise rooms, and spaces for lockers, showers and restrooms; and 3,033 square feet of floor area on a portion of the first floor with an exercise room, and spaces for reception, retail, lockers, showers and restrooms; and

WHEREAS, the PCE opened on January 28, 2019, as “Fithouse,” and operates daily, from 6:00 a.m. to 10:00 p.m.; and

WHEREAS, while noise abatement measures are provided in the PCE space to ensure that the sound level in other portions of the building do not exceed 45dBA, including sound emanating from any sound system, the exercise studios of the PCE are constructed with sound attenuating acoustical wall partitions and batt insulation, the applicant provided evidence of acoustical inspections and testing performed over several periods to identify and resolve excessive noise and vibration impacts associated with the operation of the PCE; and

WHEREAS, in response to recommendations made by the applicant’s acoustical consultant, the PCE installed and maintains a sound limiter on the exercise studio music and microphone sound levels and represents that the sound attenuation measures maintained in the PCE space resolved complaints over noise and vibration; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located in an existing commercial space on the ground floor and cellar level of an existing building, typical of developments located in the surrounding area; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and will maintain a sound limiter on the studio music and microphone levels so as to cause no disturbance to neighbors as a result of noise or vibration; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area

MINUTES

smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm to an FDNY-approved central station—will be maintained within the PCE space; and

WHEREAS, by letter dated March 9, 2019, the Fire Department stated that an application was filed with DOB for a new fire alarm system (Alt II 123488109) in the tenant space, and the Department requires a fire alarm system to be installed; the second means of egress from the tenant space is through the residential portion of the premises to West 13th Street at the cellar and first floors; the application was disapproved and the Department will assist the applicant to expedite for approval; the premises have a sprinkler system that has been inspected and tested satisfactory to Department standards; and, the Department has no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention will inspect these premises; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-030M, dated September 7, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-2 zoning district and partially within a C6-2M zoning district, the operation of a proposed physical culture establishment on a portion of the cellar level and first floor of an existing six- (6) story plus cellar and sub cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 2, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2029;

THAT the PCE shall be operated and maintained so as to cause no disturbance to neighbors as a result of noise or vibration;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-143-BZ”), shall be obtained within one (1) year, by October 3, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2019.

2017-231-BZ

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

MINUTES

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board’s Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for adjourned hearing.

2018-167-BZ

APPLICANT – Sheldon Lobel, P.C., for Steven Oppenheimer, owner.

SUBJECT – Application October 19, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district.

PREMISES AFFECTED – 1133 East 22nd Street, Block 7604, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for adjourned hearing.

2019-40-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for 177 East 73rd Owner LLC.; 175 East 73rd Owner LLC, lessee.

SUBJECT – Application March 1, 2019 – Variance (§72-21) to permit the enlargement of a House of Worship (UG 4) (Persian Jewish Center) contrary to ZR §24-36 (rear yard); ZR §24-11 (lot coverage); ZR §§24-50 & 23-662 (minimum base height and maximum height of buildings and setback). R8B (NYC Individual Landmarked Buildings)

PREMISES AFFECTED – 175-179 East 73rd Street, Block 1408, Lot(s) 30 and 31, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 10, 2019, at 10 A.M., for continued hearing.

REGULAR MEETING

THURSDAY AFTERNOON, OCTOBER 3, 2019

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2018-150-BZ

APPLICANT – Law Office of Lyra J. Altman, for Isaac Mizrahi, owner.

SUBJECT – Application September 18, 2018 – Variance (§72-21) to permit the enlargement of an existing one family home contrary to ZR §23-14 (FAR); ZR §23-143 (Lot Coverage); ZR §23-161(b) (Side Yard); ZR §23-461(c) (less than required open area between buildings); and ZR §23-47 (Rear Yard). R4 zoning district.

PREMISES AFFECTED – 2215 Homecrest Avenue, Block 7373, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 3, 2019.

2019-42-BZ

CEQR #19-BSA-100K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-02 18th Avenue LLC, owner; Blink 18th Avenue Inc., lessee.

SUBJECT – Application March 5, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Blink Fitness) to be located on a portion of the 1st floor and second floors of an existing building contrary to ZR §32-10. C4-2 zoning district.

PREMISES AFFECTED – 6502 18th Avenue, Block 5553, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 12, 2019, acting on DOB

MINUTES

Alteration Type 1 Application No. 321917146, reads in pertinent part:

“ZR 32-10, ZR 32-31: a physical culture establishment is permitted in this district only by special permit of the Board of Standards and Appeals. Resubmit application for review if permission is granted by BSA;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-2 zoning district, a physical culture establishment (“PCE”) on portions of the first and second floors of an existing two- (2) story with cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the southwest corner of 18th Avenue and 65th Street, located within a C4-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along 18th Avenue, 150 feet of frontage along 65th Street, 15,030 square feet of lot area and is occupied an existing two- (2) story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or

masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 2,981 square feet of floor area on the first floor with areas for the PCE reception, office, storage and locker room; and 14,165 square feet of floor area on the second floor with exercise spaces and locker rooms; and

WHEREAS, the PCE is proposed to operate as “Blink Fitness,” with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m.; and, Sunday, 7:00 a.m. to 9:00 p.m.; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the applicant states that, while the PCE is located within a commercial building, sound attenuation materials are maintained within the PCE to ensure that sound levels in other portions of the building do not exceed 45 dBa, including that emanating from any sound system; these measures include: batt insulation in demising walls of the PCE and rubber flooring in various areas of the PCE; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located in an area with comparable commercial buildings containing commercial uses including pharmacies, banks, cafes and other commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it will be located entirely within an existing commercial building at a commercially developed intersection; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, including a connection of the interior fire alarm system to an FDNY-approved central station, will be maintained within the PCE space; and

WHEREAS, by letter dated September 26, 2019, the Fire Department states that applications for the fire alarm systems and public assembly space must be filed with DOB prior to the occupancy of the space; the premises are protected by a wet sprinkler system, for which a hydrostatic pressure test was performed on July 8, 2019, and tested satisfactory; the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-100K, dated March 8, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on portions of the first floor and second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-2 zoning district, the operation of a physical culture establishment on portions of the first and second floors of an existing two- (2) story with cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 2, 2019"-Six (2) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 3, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system, including a connection of the interior fire alarm system to an FDNY-approved central station, shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-42-BZ"), shall be obtained within one (1) year, by October 3, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the

MINUTES

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2019.

2019-79-BZ

CEQR #19-BSA-122M

APPLICANT – Pryor Cashman LLP, for JS 29 West LLC, Am29 West LLC, NN West LLC, MAHFAR 29 West LLC, et alia, owner; CorePower Yoga, lessee.

SUBJECT – Application April 25, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (CorePower Yoga) to be located on the first floor building contrary to ZR §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 29 West 30th Street, Block 832, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 29, 2019, acting on DOB Alteration Type I Application No. 123860278, reads in pertinent part:

“ZR 42-10, ZR 73-36, BB 2013-10: The proposed Physical Culture Establishment in Zoning District M1-6 is not permitted as-of-right per ZR 42-10. Secure BSA approval per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-6 zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 12-story plus cellar commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the Board was also in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the north side of West 30th Street, between Broadway and Fifth Avenue, within an M1-6 zoning district, in Manhattan; and

WHEREAS, the site has approximately 70 feet of

frontage along West 30th Street, 99 feet of depth, 6,913 square feet of lot area and is occupied by an existing 12-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and

(1) that such *use* contains:

- (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 2,683 square feet of floor area on a portion of the first floor with two (2) yoga studios, restrooms, lockers with showers, a lobby and storage space; and

WHEREAS, the PCE is proposed to operate as “CorePower Yoga,” with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 6:30 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located within a commercial building, operational controls are proposed for the PCE space to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces; these measures include only soft music played within the PCE on a system with a sound limiter, and no use of heavy weights, equipment or pull-up rings in the PCE; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located entirely within an existing commercial building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it will be located below the office uses in the subject building, will not contain any workout equipment or workout attachments to the ceiling, and only light hand weights will be utilized in only certain classes; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, including connection of the interior fire alarm system to an FDNY-approved central station, will be maintained within the PCE space; and

WHEREAS, by letter dated September 26, 2019, the Fire Department objected to the application and stated that the premises are protected by a fire alarm system and therefore the space shall have a system installed and connected to the existing fire alarm panel; if the current fire alarm system in the space will not be disturbed and will be maintained, additional or new devices will not be required; based on the plans that have been submitted, the Department does not have enough information to make the determination; the entry doors in the space are contrary to the New York City Construction Codes in that doors shall swing in the direction of egress (to the street) for commercial spaces; the premises have a fire suppression system (sprinkler and standpipe), for which the Department will be witnessing a hydrostatic and flow test scheduled for January 2020; and

WHEREAS, the applicant submitted revised plans, including correction of the door swing direction; and

WHEREAS, by letter dated October 2, 2019, the Fire Department states that applications for the fire alarm system and suppression system (sprinkler) have been filed with DOB and such work must be completed prior to occupancy of the space; the premises are protected by a wet sprinkler system, for which a hydrostatic pressure test was performed on July 8, 2019, and tested satisfactory; based upon the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-122M, dated April 26, 2019; and

MINUTES

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-6 zoning district, the operation of a proposed physical culture establishment on a portion of the first floor of an existing 12-story plus cellar commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 3, 2019”-Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 3, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-79-BZ”), shall be obtained within four (4) years, by October 3, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2019.

2017-21-BZ

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38th Street, Block 645, Lot 10, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2018-172-BZ

APPLICANT – Barak A. Wrobel, for The Trustees of the Estate Belonging to the Diocese of Long Island, owner; Ali Forney Center, Inc., lessee.

SUBJECT – Application November 1, 2018 – Variance (§72-21) to permit the development of multiple dwelling residence comprising of 21 units of Permanent Supportive Housing contrary to ZR §23-142 (open space); ZR §§23-22, 23-24 and 24-20 (maximum number of dwelling units); ZR §23-45 (front yards); ZR §24-35 (side yards); ZR §23-631(d) (maximum building heights); ZR §23-632(b) (side yard setbacks) and ZR §23-841 (outer court dimensions). R5 zoning district.

PREMISES AFFECTED – 46-09 and 46-19 31st Avenue, Block 728, Lot 1 & 5, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2019-16-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corp., owner.

SUBJECT – Application January 22, 2019 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald’s) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts.

PREMISES AFFECTED – 250-01 Northern Boulevard, Block 8129, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

MINUTES

2019-31-BZ

APPLICANT – Goldman Harris LLC, for 513 West 26th Street, LLC, owner; The Wright Fit, lessee.

SUBJECT – Application February 8, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (The Wright Fit Performance Lab) to be located on the fourth and fifth floors of a five-story building contrary to ZR §42-10. M1-5 Special West Chelsea zoning district. and West Chelsea Historic District.

PREMISES AFFECTED – 525 West 26th Street, Block 698, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

2019-59-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1421 Webster Avenue, LLC, owner; Blink Webster Avenue Inc., lessee.

SUBJECT – Application March 19, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Blink Fitness) located on the first and second floor of a new commercial building contrary to ZR §32-10. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1417 Webster Avenue, Block 2887, Lot 142, Borough of Bronx.

COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for decision, hearing closed.

2019-63-BZ

APPLICANT – Sheldon Lobel, P.C., for 120 West 72nd Street Holdings LLC, owner; EPOC UWS LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Orangetheory Fitness) located on a portion of the first-floor of an existing mixed- use commercial and residential building contrary to ZR §32-10. C4-6A zoning district (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 120 West 72nd Street, Block 1143, Lot 7505, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

2019-71-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2862-2874 Fulton Street LLC, owner; Blink 2862 Fulton Street, Inc., lessee.

SUBJECT – Application April 5, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) to be located on the first and second floor of an existing commercial building. C2-4 (R6A) (EC6) zoning district.

PREMISES AFFECTED – 2868 Fulton Street, Block 3950, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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November 1, 2019

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NASR SHETA

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Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|--------------------------------------|---------|
| DOCKET | 771 |
| CALENDAR of November 19, 2019 | |
| Morning | 772 |
| Afternoon | 772/773 |

CONTENTS

**MINUTES of Regular Meetings,
Thursday, October 22, 2019**

Morning Calendar774

Affecting Calendar Numbers:

| | |
|--------------|--|
| 285-52-BZ | 30-14 34 th Avenue, Queens |
| 822-59-BZ | 1774 Victory Boulevard, Staten Island |
| 132-92-BZ | 3948 Amboy Road, Staten Island |
| 188-96-BZ | 444 Soundview Avenue, Bronx |
| 274-00-BZ | 134 East 38 th Street, Manhattan |
| 59-08-BZ | 591 Forest Avenue, Staten Island |
| 61-13-BZ | 1385 Broadway, Manhattan |
| 429-29-BZ | 4801 Kings Highway, Brooklyn |
| 138-87-BZ | 218-36 Hillside Avenue, Queens |
| 200-98-BZ | 633 Third Avenue, Manhattan |
| 2017-318-A | 155 Johnson Street, Staten Island |
| 2017-59-A | 3857 Oceanview Avenue, Brooklyn |
| 2017-99-A | 37-98 Railroad Avenue, Queens |
| 2017-144-A | 25-30 44 th Street, Queens |
| 2017-244-BZ | 2208 Boller Avenue, Bronx |
| 2018-136-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-25-BZ | 109 Wortman Avenue, Brooklyn |
| 2016-1215-BZ | 142 West 29 th Street, Manhattan |
| 2017-34-BZ | 311 Adams Avenue, Staten Island |
| 2018-137-BZ | 251-77 Jericho Turnpike, Queens |
| 2018-145-BZ | 251-73 Jericho Turnpike, Queens |
| 2019-15-BZ | 79-40 Cooper Avenue, Queens |
| 2019-23-BZ | 290 Mulberry Street, aka 41 East Houston Street, Manhattan |

Afternoon Calendar794

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2018-181-BZ | 150 East 55 th Street, Manhattan |
| 2018-59-BZ | 3030 Northern Boulevard, Queens |
| 2018-66-BZ | 118 West 72 nd Street, Manhattan |
| 2019-25-BZ | 40-48 Commercial Street, Brooklyn |
| 2019-41-BZ | 1 West Street, Manhattan |
| 2019-62-BZ | 435 Hudson Street, Manhattan |

DOCKETS

New Case Filed Up to October 22, 2019

2019-272-BZ

600 6th Avenue, Block 00819, Lot(s) 7502, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Sweat 440) located on the cellar and first floor of an existing ten-story mixed-use building. C6-2A zoning district. C6-2A district.

2019-273-BZ

139-146 West Street, Block 0084, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Rumble Fitness) located within a portion of the cellar and first floor of an existing building contrary to ZR §32-10. C6-4 Lower Manhattan Special District. Site is designated as an NYC Individual Landmark (The Verizon Building) and on the National Register of Historic Places. C6-4(LM District) district.

2019-274-BZ

31 West 14th Street, Block 00816, Lot(s) 22, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Rowgatta) located in the cellar and ground floor of an existing building contrary to ZR §32-10. C6-2M zoning district. C6-2M district.

2019-275-BZ

122 West 27th Street, Block 00802, Lot(s) 0056, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Fit Hit) located in the cellar and ground floor of an existing building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.

2019-276-A

15 Stuart Lane, Block 8103, Lot(s) 0062, Borough of **Queens, Community Board: 11**. Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district. R1-2 district.

2019-277-BZ

81-04 166th Street, Block 7026, Lot(s) 0021, Borough of **Queens, Community Board: 8**. Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district. R2A district.

2019-278-BZ

9201 5th Avenue, Block 6109, Lot(s) 0023, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District. R6B (C2-3) + R5B district.

2019-279-BZ

4119 Richmond Avenue, Block 5268, Lot(s) 0037, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3A Special South Richmond District (Lower Density Growth Management Area) R3A/SRD district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING NOVEMBER 19, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, November 19, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

727-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shuqeri Selimaj Family 2018 Trust, owner; Club A Steakhouse, lessee.

SUBJECT – Application February 14, 2019 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three-story building in an R8B zoning district which expired on January 17, 2019. R8B zoning district.

PREMISES AFFECTED – 240 East 58th Street, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

1-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 39-01 QB LLC, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application July 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) which expired December 1, 2018; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board's Rules. M1-4 zoning district.

PREMISES AFFECTED – 39-01 Queens Boulevard, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

2017-216-BZ

APPLICANT – Sheldon Lobel, P.C., for 411 Wales Realty, LLC, owner; Civic Builders, Inc., lessee.

SUBJECT – Application May 10, 2019 – Amendment of a previously approved Special Permit (§73-19) to permit a school (UG 3) (Roselyn Yalow Charter School) within an existing two-story manufacturing building, contrary to ZR §42-12. The amendment seeks to modify a condition permitting middle school or high school to occupy a second-floor incubation space. It proposed to provide a temporary space for an elementary school to incubate the second floor for two years. M1-2 zoning district.

PREMISES AFFECTED – 411 Wales Avenue, Block 2574, Lot 82, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEALS CALENDAR

2018-68-A thru 2018-90-A

APPLICANT – Sanna & Loccisano Architects, P.C., for Rubicon SGA, LLC, owner.

SUBJECT – Application May 14, 2018 – Proposed construction of 23 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district.

PREMISES AFFECTED – 90, 84, 78, 72, 66, 60, 54, 48, 42, 36, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 96 Santina Drive, Block 6517, Tentative Lots, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, Borough of Staten Island.

COMMUNITY BOARD #5SI

2019-168-A

APPLICANT – Greenberg Traurig, LLP, for 140 Fulton Associates LLC, owner.

SUBJECT – Application June 7, 2019 – to permit the development of a mixed-use building with retail and hotel use on requesting a waiver pursuant to General City Law §35 to allow the building to be constructed in the bed of a mapped street and a waiver of bulk regulation pursuant to ZR §72-01(g). C5-5 Special Lower Manhattan District.

PREMISES AFFECTED – 140 and 142 Fulton Street, Block 79, Lot(s) 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

REGULAR MEETING NOVEMBER 19, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 19, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2019-22-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita Ramchandani, owner.

SUBJECT – Application January 28, 2019 – Variance (§72-21) to permit the construction of a semi-detached single-family home contrary to use (ZR §22-12(a)(1); FAR (ZR §23-142); side yards (ZR §23-461) and parking (ZR §25-22). R3X zoning district.

PREMISES AFFECTED – 24-47 95th Street, Block 1106,

CALENDAR

Lot 44, Borough of Queens.

COMMUNITY BOARD #3Q

2019-26-BZ

APPLICANT – Akerman, LLP, for 233 Nevins Street LLC, owner; The Cliffs at Gowanus, LLC, lessee.

SUBJECT – Application February 4, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Cliffs at Gowanus*) a portion of the first floor, and on the second, third, and fourth floors contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 233 Nevins Street aka 236 Butler Street, Block 412, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2019-30-BZ

APPLICANT – Eric Palatnik, P.C., for Georgy Reyderman, owner.

SUBJECT – Application November 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2705 East 28th Street, Block 8791, Lot 120, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-80-BZ

APPLICANT – Eric Palatnik, P.C., for First Flatiron LLC, owner; MJM Boxing 2 LLC, lessee.

SUBJECT – Application April 26, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Title Boxing Club*) to be located on the second floor of an existing 10-story mixed use commercial and residential building contrary to ZR §32-10. C6-4A Flatiron District located within the Ladies Mile Historic District.

PREMISES AFFECTED – 15 West 18th Street, Block 820, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

2019-93-BZ

APPLICANT – Jay Goldstein, Esq., for Khal Zichron Avrohom Yaakov, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-story plus cellar house of worship (UG 4) (*Khal Zichron Avrohom Yaakov*) contrary to ZR §24-11 (floor area/FAR), ZR §24-34 (front yard), ZR §24-35 (side yards), ZR §24-36 (rear yard) and ZR §25-31 (Parking). R2 zoning district.

PREMISES AFFECTED – 3203 Bedford Avenue, Block 7607, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 22, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

285-52-BZ

APPLICANT – Sheldon Lobel, P.C., for Astoria 34 LLC, owner; Lukoil North America, lessee.

SUBJECT – Application August 30, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 21, 2017; Amendment to permit the conversion of accessory automotive service bays to an accessory convenience store; Waiver of the Board’s rules. R5 Zoning District.

PREMISES AFFECTED – 30-14 34th Avenue, Block 607, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, extension of the term, pursuant to ZR § 11-411, of a previously granted variance that permitted the use of the site as an automotive service station, which expired on October 21, 2017, and an amendment to permit the conversion of the existing accessory automotive service building into an accessory convenience store and legalize site modifications; and

WHEREAS, a public hearing was held on this application on August 6, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 22, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Katz also recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 34th Avenue and 31st Street, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 110 feet of

frontage along 34th Avenue, 65 feet of frontage along 31st Street, 6,415 square feet of lot area and is occupied by an existing automotive service station and accessory one- (1) story building (1,467 square feet of floor area); and

WHEREAS, the Board has exercised jurisdiction over then-tax lot 29 since October 21, 1952, when, under the subject calendar number, the Board granted a variance, for a term of 15 years, to permit the premises to be occupied as proposed as a gasoline service station, and as indicated on plans filed with the application, on condition that complete working drawings be submitted to the Board for further consideration before the imposing of conditions and before same are filed with the Borough Superintendent; such working plans be filed within two (2) months from the date of the resolution, and after approval of such plans all permits be obtained and all work completed within the requirements of within one (1) year; and, such plans indicate suitable brick walls on all interior lot lines and the accessory building constructed of brick masonry; and

WHEREAS, on July 28, 1953, under the subject calendar number, the Board amended the resolution to accept new drawings on condition that all buildings and uses be removed and the plot be levelled substantially to the grade of the surrounding streets; the premises be arranged, designed and constructed substantially as proposed on such working drawings; there be no cellar under the accessory building; the accessory building may be faced with face brick or carrara glass and the cornices and band courses may be of porcelain enamel; the pumps be erected not nearer than ten (10) feet to the street lines of 34th Avenue and 31st Street, and be of a low approved type; that the number of gasoline storage tanks not exceed eight (8) 550-gallon tanks; there be erected on the interior lot line walls a brick masonry wall not less than 5’-6” in height and properly coped, as proposed and shown, to a total height of not less than 5’-6”, except that such wall may be stepped down to an average height of not less than four (4) feet within ten (10) feet of the building line; the balance of the premises be paved with concrete or asphaltic pavement; curb cuts be restricted to two (2) curb cuts to 34th avenue, each not over 30 feet in width, and two (2) curb cuts to 31st street, each not over 20 feet in width, with no portion of any curb cut to be nearer than five (5) feet to any lot line as prolonged; the sidewalks and curbing around the premises be repaired or reconstructed to the satisfaction of the Borough President; there be erected within the building line near the intersection a block of concrete not less than 12 inches in height and extending for a distance of not less than five (5) feet along either street building line and which may be segmental in shape; that under section 7, subdivision i, there may be minor repairing maintained within the accessory building with hand tools only for adjustments; that under section 7, subdivision h, for a similar term, there may be parking and storage of cars awaiting service; signs be restricted to a permanent sign attached to the facade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs but

MINUTES

permitting the erection within the building line at the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than four (4) feet; and, such portable firefighting appliances be maintained as the Fire Commissioner directs; and

WHEREAS, on April 6, 1954, under the subject calendar number, the Board further amended the resolution to accept working drawings and to permit the extension of area by the addition of lot 28, now merged with the subject site, on condition that the proposed extension of area be used only for parking of cars awaiting service similar to that permitted in the resolutions above cited; that a wall be constructed on the interior lot lines to a height of 5'-6" and be carried to the street line, as required in the resolution above cited, except that within ten (10) feet of the street line the wall may be reduced to an average of four (4) feet; lot 28 be surfaced similarly as required for lot 29; an additional curb cut may be permitted where shown to a width of 25 feet, but located not nearer than five (5) feet to the side lot line as extended; and, all permits required be obtained and all work completed within six (6) months, by October 6, 1954; and

WHEREAS, on March 5, 1957, under the subject calendar number, the Board further amended the resolution to permit 12 550-gallon gasoline storage tanks; and

WHEREAS, on October 24, 1967, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire October 21, 1977, on condition that the advertising ground sign be removed from the premises; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on June 24, 1969, under the subject calendar number, the Board further amended the resolution to permit alteration to the accessory building such that it may be faced with porcelain enamel, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on September 20, 1977, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on October 21, 1987, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by September 20, 1978; and

WHEREAS, on November 22, 1988, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire October 21, 1997, to legalize the removal of the 5'-6" high brick wall along the west lot line and the installation of a new concrete bumper and a five- (5) foot high woven wire fence on top of the existing 5'-6" high brick wall located on the southwest corner of the station on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or

vehicular traffic; other than as amended the resolution be complied with in all respects, and, a new certificate of occupancy be obtained within one (1) year, by November 22, 1989; and

WHEREAS, on March 9, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit the addition of a metal canopy over two (2) new concrete pump islands and an extension of term of the variance for ten (10) years, to expire October 21, 2007, on condition that the premises be kept clean of debris and graffiti; there be no repairs made outdoors; there be no parking on the sidewalks; there be no outdoor storage; all signs be maintained in accordance with BSA-approved plans; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year from the date of this amended resolution; and

WHEREAS, on December 6, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for a period of ten (10) years and to grant a one- (1) year extension of time to obtain a certificate of occupancy, to expire December 6, 2012; on condition that the term of the grant expire on October 21, 2017; the conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained by December 6, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that use has been continuous since the original grant in 1952; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, the applicant also seeks an amendment to permit the conversion of the accessory automotive service station building to an accessory convenience store in accordance with Department of Buildings ("DOB") Technical Policy and Procedure Notice ("TPPN") # 10/99, as well as to legalize additional curb cuts at the subject site; and

MINUTES

WHEREAS, TPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the sales area of the accessory convenience store is 660 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (1,604 square feet); and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, and, instead, proposes interior alterations and non-structural site modifications as are permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the location of the dumpster, vacuum and air pump, inadequate planting, the excessive width of the 38-foot wide curb cut, and the presence of light levels on adjacent properties; and

WHEREAS, in response, the applicant provided revised plans locating dumpster, vacuum and air pump away from nearby residential uses, two (2) planting areas with sufficient planting beds, demonstrated adequate shielding of light levels by way of the existing building and walls, and represented that the 38-foot wide curb cut is required to serve the maneuverability of delivery trucks to the subject site and stated that a 30-foot wide curb cut would impede the maneuverability at the site; and

WHEREAS, by letter dated October 21, 2019, the Fire Department states that a review of Fire Department records indicates that the subject site is current with their Fire Department permits with respect to use as a motor vehicle repair shop and for the storage of combustible liquids, based upon the foregoing, the Fire Department has no objection to the subject application, and the Bureau of Fire Prevention will continue to inspect the premises and enforce all applicable rules and regulations; and

WHEREAS, in light of the foregoing, the Board finds that the requested extension of term and amendment are appropriate, subject to conditions below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(2) of its Rules of Practice and Procedure and *amends* the resolution, dated October 21, 1952, as amended through December 6, 2011, so that, as amended, this portion of the resolution reads: “to permit the conversion of the existing one- (1) story accessory building in into an accessory convenience store, and extend the term of the variance for a term of ten (10) years, expiring October 21, 2027; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “October 22, 2019”-Twenty (20) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 21, 2027;

THAT fencing, asphalt and landscaping shall be maintained as shown on the BSA-approved plans, replaced or repaired as necessary to maintain first-class condition;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises be removed within 48 hours;

THAT all exterior lighting shall be directed down and away from adjacent residential uses;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 285-52-BZ”) shall be obtained within one (1) year, by October 22, 2020; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 22, 2019.

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for BOLLA EM Realty, LLC, owner.

SUBJECT – Application December 4, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to enlarge the existing accessory building and convert the automotive service bays to accessory convenience store. C2-1/R3-2 zoning district. PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 5, 2018, acting on Alteration Type I Application No. 520146217, reads in pertinent part:

“Proposed amendment to the automotive service filed under this application is contrary to

MINUTES

previously approved Board of Standards and Appeals Cal. No. 822-59-BZ & 823-59-A; Board of Standards and Appeals approval is required for such amendment;” and

WHEREAS, this is an application for an amendment of a variance, previously granted by the Board, which permitted the operation of an automotive service station (UG 16B); and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Victory Boulevard and Manor Road, in an R3-2 (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 128 feet of frontage along Victory Boulevard, 100 feet of frontage along Manor Road, 14,068 square feet of lot area and is occupied by an existing automotive service station with existing one- (1) story accessory building (1,800 square feet of floor area); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1960, when, under the subject calendar number, the Board granted a variance to permit in a retail use district, the construction of an existing gasoline service station and to continue the present uses, lubricatorium, minor auto repairs, car washing, sales room, utility room and parking and storage of motor vehicles, on condition that the work be done in accordance with drawings filed with the application; the accessory building be moved five (5) feet from the rear lot line; there be no commitment on future pumps; pumps to be installed be placed 15 feet back from the existing building; the men's toilet in the accessory building have a door from the utility room and not from the outside; all laws, rules and regulations applicable be complied with; and, all permits be obtained, all work completed and a certificate of occupancy obtained within one (1) year, by June 7, 1961; and

WHEREAS, on June 7, 1970, under BSA Cal. No. 823-59-A, the Board granted a waiver of General City Law § 35 on condition that the requirements of the resolution adopted under BSA Cal. No. 822-59-BZ be complied with and a certificate of occupancy be obtained; and

WHEREAS, on July 5, 1961, under the subject calendar number, the Board amended the resolution to extend the time to obtain permits and complete the work for one (1) year, by July 5, 1962, on condition that a certificate of occupancy be obtained; and

WHEREAS, on November 4, 1964, under the subject calendar number, the Board further amended the resolution to extend the time to obtain permits, complete the work and obtain a certificate of occupancy for one (1) year, by November 4, 1965; and

WHEREAS, on September 28, 1965, under the subject calendar number, the Board further amended the resolution by adding that the gasoline service station may be redesigned, re-arranged and constructed substantially as shown on revised drawings of proposed conditions filed with the application, on condition that a permit be obtained and work completed within one (1) year, by September 28, 1966; a certificate of occupancy be obtained; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on March 22, 1966, under the subject calendar number, the Board further amended the resolution by adding that in the event the owner desires to seal the existing tanks and to install 12 new approved gasoline storage tanks, such change be permitted, substantially as shown on revised drawings of proposed conditions, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on April 2, 1974, under the subject calendar number, the Board further amended the resolution by adding that the gasoline pumps facing Manor Road may be removed and the accessory building may be altered substantially as shown on revised drawing of proposed conditions, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 2, 1987, under the subject calendar number, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 139-87-A, the Board further amended the resolution to permit the erection of a new 14'-4" by 51'-0" steel canopy over two (2) new gasoline pump islands with new self-serve multiple product dispenser ("MPD") pumps and to alter the existing office and sales area of the accessory building to accommodate an attendant's booth, on condition that the premises conform to revised drawings of proposed conditions; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year, by June 2, 1988; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on June 2, 1987, under BSA Cal. No. 139-87-A, the Board granted an appeal to permit the use of self-service gasoline pumps at the subject site; and

WHEREAS, on December 9, 2014, under the subject calendar number, the Board further amended the resolution to permit the conversion of the existing automotive service bays into an accessory convenience store and enlarge the accessory building at the existing gasoline service station on condition that all work substantially conform to drawings, filed with the application; the building have a maximum of 2,451 square feet of floor area (0.17 floor area ratio ("FAR")); the site be maintained free of debris and graffiti; signage be in accordance with C2 regulations; landscaping and buffering be maintained in accordance with the BSA-approved plans; lighting be directed downward and away from adjoining residences; the conditions be noted in the

MINUTES

certificate of occupancy; a certificate of occupancy be obtained by December 9, 2015; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on September 19, 2017, under the subject calendar number, the Board further amended the resolution to extend the time to complete construction for four (4) years, to expire on September 19, 2021, on condition that any and all work substantially conform to drawings filed with the application; the building have a maximum of 2,451 square feet of floor area (0.17 FAR); the site be maintained free of debris and graffiti; signage be in accordance with C2 regulations; landscaping and buffering be maintained in accordance with the Board-approved plans; lighting be directed downward and away from adjoining residences; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; the conditions be noted on the certificate of occupancy; a certificate of occupancy be obtained by September 19, 2021; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, the applicant seeks an amendment to permit the conversion of the existing accessory building to an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice (“TPPN”) # 10/99, and to reflect the addition of a striped parking stall, ADA accessibility, changes to fencing, landscaping and signage, and a fourth dispenser island; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed sales area of the accessory convenience store is 916 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,517 square feet); and

WHEREAS, the applicant does not propose to enlarge,

extend or relocate the existing one- (1) story accessory building, and, instead, proposes interior alterations and non-structural site modifications as are permitted pursuant to ZR § 11-412; and

WHEREAS, the applicant submitted an operational plan stating the following: the station will be equipped with security cameras on the building that monitor the entirety of the site and function 24 hours a day, 7 days a week; the security camera system will additionally be utilized to monitor customer vehicles so that any prohibited parking on the Victory Boulevard and Manor Road sidewalk can be documented to assist in preventing future occurrences; an employee will monitor both the property and the Victory Boulevard and Manor Road sidewalk during normal business hours to ensure vehicles visiting the station will only park on site in designated parking stalls and not on the sidewalk; if vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property for parking (i.e.: side street) until such time an on-site parking stall becomes available; the station has an existing eight (8) parking stalls for customer use with a ninth stall proposed; additionally, there are eight (8) proposed fueling positions associated with the proposed canopy, which is an increase from the existing four (4) fueling positions; the proposal will convert the automotive service bays to an accessory convenience store, which will decrease the number of cars parking on site for longer period of times; the proposed increase in parking stalls and fueling positions in addition to the change in proposed use will provide additional spaces for customer vehicles on-site and a reduced likelihood of vehicles attempting to park on the sidewalk; and

WHEREAS, based upon its review of the record, the Board has determined that the requested amendment is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated June 7, 1960, as amended through September 19, 2017, so that as amended this portion of the resolution shall read: “to *permit* an amendment to allow for the conversion of the accessory building to an accessory convenience store and to reflect site improvements; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 22, 2019”-Seven (7) sheets; and *on further condition*:

THAT the operational plan shall be complied with;

THAT the building shall have a maximum of 2,451 square feet of floor area (0.17 FAR);

THAT the site shall be maintained free of debris and graffiti;

THAT signage shall be in accordance with C2 regulations;

THAT landscaping and buffering shall be maintained in accordance with the Board-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

MINUTES

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 822-59-BZ”), shall be obtained within four (4) years, by October 22, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 22, 2019.

132-92-BZ

APPLICANT – Willy C. Yuin, R.A., for Daniel Cassella, owner.

SUBJECT – Application October 2, 2017 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted day care use in the cellar of the subject premises in conjunction with a banquet hall use, which expired on February 9, 2017; Waiver of the Rules. R3X, CI-1 SRD zoning district.

PREMISES AFFECTED – 3948 Amboy Road, Block 5142, Lot 22, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired February 9, 2017; and

WHEREAS, a public hearing was held on this application on March 5, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 22, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is bounded by Amboy Road to the north, Hillside Terrace to the east, and Brown Avenue to the west, partially within an R3X (C1-1) zoning district and partially within an R3X zoning district, and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 100 feet of frontage along Amboy Road, 178 feet of frontage along Hillside Terrace, 130 feet of frontage along Brown Avenue, 15,625 square feet of lot area and is occupied by an existing one- (1) story commercial banquet hall (Use Group (“UG”) 9) building with 30 off-street attendant parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1920, when, under BSA Cal. No. 648-20-BZ, the Board granted a variance to permit the use of the site as a gasoline service station with a one- (1) bay lubritorium and accessory parking on condition that the entrance to the garage be from Amboy Road and not from the adjoining side streets; and

WHEREAS, on July 1, 1958, under BSA Cal. No. 648-20-BZ, the Board amended the resolution by adding that, in the event the owner desires to make certain changes as indicated on plans filed with the application, such extension of work may be permitted as shown thereon under proposed conditions, provided the proposed lubritorium building be located so as to have the entrance thereto from the rear; certain garages shown to be removed be removed and the space occupied properly paved; all buildings at the rear be removed leaving only garages which are of class 3 structure; gasoline storage tanks not exceed eight (8) 550-gallon approved gasoline storage tanks; there may be an additional dispensing pump as proposed; in all other respects the buildings and occupancy comply with all laws and rules applicable other than as required by the resolution adopted the same day under BSA Cal. No. 1017-57-A; and, all permits required be obtained and all work completed within one (1) year, by July 1, 1959; and

WHEREAS, on July 1, 1958, under BSA Cal. No. 1017-57-A, the Board granted a waiver of General City Law § 35 to permit the continuance of existing buildings and uses as shown on plans referred to in the resolution adopted the same day under BSA Cal. No. 648-20-BZ; in the event the City acquires the mapped area for street widening the recompense be as determined by the court; no buildings or equipment be maintained on that portion of the premises as mapped to be widened; other than as permitted by the resolution adopted the same day under BSA Cal. No. 648-20-BZ, the buildings and occupancy comply with all laws and rules relating thereto; and

WHEREAS, on September 22, 1959, under BSA Cal. No. 648-20-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work on condition that all permits required, including a certificate of occupancy be obtained and all work completed within one (1) year, by September 22, 1960; and

MINUTES

WHEREAS, on November 1, 1960, under BSA Cal. No. 648-20-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one (1) year, by November 1, 1961; and

WHEREAS, on October 17, 1961, under BSA Cal. No. 648-20-BZ, the Board further amended the resolution by adding that the lubritorium building may be omitted and the premises be arranged substantially as shown on revised drawings submitted with the application, on condition that all conditions be complied with in all respects; and

WHEREAS, on November 26, 1985, under BSA Cal. No. 565-85-A, the Board granted a waiver of General City Law § 35 to legalize the enlargement of a building located into a portion of the lot located beyond a widening line within the bed of a mapped street on condition that construction substantially comply with the drawings filed with the application and all laws, rules and regulations be complied with; and

WHEREAS, on July 19, 1994, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of the cellar from accessory storage (UG 6) to a banquet hall (UG 9) in an existing one- (1) story and cellar commercial building (UG 6) with accessory parking within the residential portion of the lot on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; all fencing be maintained in accordance with BSA-approved plans; the hours of the proposed banquet hall be 7:00 p.m. to 11:00 p.m., Monday through Friday, 8:00 p.m. to 12:00 a.m., Saturday, and 4:00 p.m. to 8:00 p.m., Sunday; the banquet hall be limited to one (1) function at a time and be operated non-simultaneously with the retail food store on the ground floor; valet parking be provided in accordance with BSA-approved plans during the hours of the proposed banquet hall; the term of the variance be limited to ten (10) years, to expire on July 19, 2004; the conditions appear on the certificate of occupancy; in accordance with a Conditional Negative Declaration issued on June 2, 1994, and duly published, the applicant agreed to the following: the applicant submit the following signal mitigation measures to the New York City Department of Transportation's Office of Project Analysis and Division of Signals and Street Lighting for implementation when the project is built and occupied; during the weekday p.m. and Saturday peak periods, the potential traffic impacts at the intersection at Amboy Road and Greaves Avenue/Great Kills Road southbound ramp will be mitigated by removing one (1) second from the east-west green time and allocating this one (1) second of green time to the northbound and southbound phases; during the weekday midday, weekday p.m. and Saturday peak periods, the potential traffic impacts at the intersection at Amboy Road and Giffords Lane/Brown Avenue be mitigated by removing one (1) second from the east-west green time and allocating this one (1) second of green time to the northbound and southbound phases; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other

applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four (4) years, by July 19, 1998; and

WHEREAS, on July 19, 1994, under BSA Cal No. 133-92-A, the Board granted a waiver of General City Law § 35 to permit accessory parking spaces in the bed of a mapped street on condition that all work conform to the resolution adopted the same day under the subject calendar number; and

WHEREAS, on February 1, 2000, under the subject calendar number, the Board amended the resolution, given that the area of the premises formerly occupied as a retail space was occupied as a Use Group 4 school facility and, thus, removed the need for restrictions on simultaneous banquet functions, to remove the condition that the banquet hall be limited to one (1) function at a time, on condition that in the event the school use (Use Group 4) is discontinued, approval must be obtained from the Board for any change in occupancy; and on further condition that the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects, and, a new certificate of occupancy be obtained within one (1) year, by February 1, 2000; and

WHEREAS, on February 3, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term of the variance for (10) years, to expire on July 19, 2014, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; there be no simultaneous use of the playground/parking area for both parking and as a playground; signage be posted on both of the gates at the Brown Avenue and Hillside Terrace entrances with text reading "Gate to remain closed, and no access for vehicles when play area is in use"; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on February 9, 2016, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit an extension of the term of the variance for a term of ten (10) years on condition that the site substantially conform to drawings filed with the application; the grant be limited to a term of ten (10) years, expiring July 19, 2024; the banquet hall be limited to one (1) function at a time and be operated non-simultaneously with the retail use on the ground floor; any graffiti located on the premises be removed within 48

MINUTES

hours; no events be held in the parking lot or on the front of the site; the banner located on the site be removed; all conditions from prior resolutions not specifically waived by the Board remain in effect; the conditions appear on the certificate of occupancy; a new certificate of occupancy for the premises be obtained by February 9, 2017; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that the work at the site has been completed and signed-off by the Department of Buildings but, due to other open jobs at the subject site, the applicant has experienced issues in obtaining a certificate of occupancy; and

WHEREAS, by letter dated March 1, 2019, the Fire Department objected to the application because the banquet hall does not have an approved fire alarm system; a fire alarm application was filed and disapproved May 14, 2003 and then withdrawn on January 10, 2012; the Fire Department, Fire Alarm Inspection Unit ("FAIU") has no records of a system at these premises and will inspect the premises to determine if a fire alarm had been installed; an inspection was performed by the Bureau's Licensed Public Place of Assembly ("LPPA") unit and a violation order was issued for failure to provide certificate of operation and floor/seating plans at the time of inspection; a certificate of operation was issued by the Department of Buildings, but the applicant failed to display same, as required at these premises; the Fire Department objects to this application and respectfully request that the Board does not render a decision until after the they inspect these premises; and

WHEREAS, at hearing, the Board raised concerns regarding the presence of four (4) unenclosed dumpsters in the parking lot, poorly maintained fencing, and whether there was compliance with the conditions of the Fire Department; and

WHEREAS, in response, the applicant submitted revised plans demonstrating a dumpster enclosure on site and reducing the number of dumpsters on site to three (3), improved fencing, and agreed to conditions with respect to the requirements of the Fire Department; and

WHEREAS, by letter dated October 15, 2019, the Fire Department stated that a copy of a proposal to install a fire alarm system at the above noted premises had been

submitted; the Fire Department will accept the submission that an application will be filed, approved and permitted; the system must then be tested by a licensed electrician and witnessed by the Fire Department; they acknowledge that this installation will take some time to complete; and, based upon the foregoing, the department has no objection to the above referenced application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(d)(2) its Rules of Practice and Procedure and *amends* the resolution, dated July 19, 1994, as amended through February 9, 2016, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to obtain a certificate of occupancy for four (4) years, to October 22, 2023, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 23, 2019"-Six (6) sheets; and *on further condition*:

THAT pursuant to Fire Department requirements, a fire alarm system shall be filed and installed within six (6) months, by April 22, 2020;

THAT all Fire Department rules and regulations shall be complied with;

THAT all fencing, landscaping, dumpsters and enclosures shall be installed and maintained, as shown on the BSA-approved plans, repaired or replaced as necessary to maintain them in first-rate condition;

THAT the parking area shall be resurfaced and maintained in first-rate condition;

THAT the site shall be maintained free of debris and graffiti at all times;

THAT the term of the variance shall expire on July 19, 2024;

THAT the banquet hall shall be limited to one (1) function at a time and be operated non-simultaneously with the retail use on the ground floor;

THAT no events shall be held in the parking lot or on the front of the site;

THAT the banner, previously located on the site, shall be maintained removed;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 132-92-BZ"), shall be obtained within four (4) years, by October 22, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

MINUTES

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 22, 2019.

188-96-BZ

APPLICANT – Eric Palatnik, P.C., for William McCombs, owner.

SUBJECT – Application November 21, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on January 6, 2018; Amendment (§11-412) to permit the enlargement of the accessory building, provide new pump islands and install a canopy; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 29, 2018, acting on Alteration Type I Application No. 220671985, reads in pertinent part:

“Proposed amendment to the automotive service is contrary to previous approval under BSA Cal. No. 188-96-BZ and must therefore be referred back to the Board of Standards and Appeals;” and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an amendment of a variance, previously granted by the Board, which permitted the operation of an automotive service station, an extension of the term, which expired on January 6, 2018, and to permit the enlargement of the convenience store and installation of new pump islands; and

WHEREAS, a public hearing was held on this application on July 16, 2019 after due notice by publication in *The City Record*, with continued hearings on October 3, 2019, and October 22, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 9, the Bronx,

recommends approval of this application; and

WHEREAS, the subject site is bounded by Soundview Avenue to the west and Underhill Avenue to the east, in an R5 zoning district, in the Bronx; and

WHEREAS, the site has approximately 178 feet of frontage along Soundview Avenue, 157 feet of frontage along Underhill Avenue, 8,206 square feet of lot area and is occupied by an existing automotive service station with two (2) pump islands and one- (1) story accessory convenience store building with 1,264 square feet of floor area and 583 square feet of sales area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1955, when, under BSA Cal. No. 38-42-BZ, the Board granted a variance, for a term of 15 years, to permit the premises to be occupied as a gasoline service station as proposed on plans filed with the application on condition that the premises be levelled substantially to the grade of Soundview Avenue and Leland Avenue and be constructed and arranged substantially as indicated on such plans; the accessory building have no cellar under the building; the accessory building be arranged substantially as shown and be faced with face brick of the design as indicated and with the building of a design as indicated; along the lot line to the north there be erected a masonry wall not less than three (3) feet in height with a steel picket fence 2’-6” in height a total height of 5’-6”; suitable terminal posts be erected at each building line; a planting area be maintained with suitable planting, as shown, protected with a concrete curb not less than six (6) inches in width and six (6) inches in height above grade; a similar fence be erected along the street building line of Underhill Avenue, as shown, with similar planting in the area west of such fence and at the intersection, where shown; the pumps be of a low approved type, erected not less than 15 feet from the street building line of Soundview Avenue; the balance of the premises be paved with concrete or asphaltic pavement curb cuts be restricted to two (2) curb cuts to Soundview Avenue each 30 feet in width, located substantially where shown; signs be restricted to a permanent sign attached to the façade of the accessory building, and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection of a post standard for the supporting of a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than four (4) feet; such portable firefighting appliances be maintained as the Fire Commissioner directs; all permits be obtained, including a certificate of occupancy, and all work completed within one (1) year, by May 3, 1956; and

WHEREAS, on June 4, 1957, under BSA Cal. No. 38-42-BZ, the Board amended the resolution to permit two (2) additional 550-gallon gasoline storage tanks, for a total of 12; and

WHEREAS, on December 9, 1969, under BSA Cal. No. 38-42-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on May 3, 1980, on condition that there be no storage of commercial

MINUTES

vehicles; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on October 22, 1974, under BSA Cal. No. 38-42-BZ, the Board further amended the resolution on condition that the gasoline pumps conform to revised drawings submitted with the application, and other than as amended the resolution be complied with in all respects; and

WHEREAS, on October 14, 1980, under BSA Cal. No. 38-42-BZ, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire on October 14, 1990, on condition that the station be operated at all times in such a fashion to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by October 14, 1981; and

WHEREAS, on January 6, 1998, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-412, permitted a re-establishment of the gasoline service station with accessory uses and permitted the conversion of the repair bays and car washing area to an accessory convenience store on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term of the variance be limited to ten (10) years, to expire on January 6, 2008; fencing and screening be provided and maintained in accordance with BSA-approved plans; landscaping be provided and maintained in accordance with BSA-approved plans; lighting levels not exceed those specified on BSA-approved plans and be positioned down and away from nearby residential uses; signage be limited in accordance with BSA-approved plans; the hours of operation of the accessory convenience store be limited to 6:00 a.m. to 11:00 p.m.; the premises be maintained clear and free of graffiti; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one (1) year, by January 6, 1999; and

WHEREAS, on January 31, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for a period of ten (10) years, to expire on January 6, 2018, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the grant expire on January 6, 2018; the site be maintained free of debris and graffiti; all signage on the site comply with C1 district regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other

applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term having expired, the applicant seeks the subject relief; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant also seeks an amendment to enlarge the existing accessory convenience store building and to provide new pump islands and canopy; and

WHEREAS, ZR § 11-412 states, in pertinent part, that the use of any building or other structure shall not be extended, and the building or other structure shall not be enlarged, in excess of 50 percent of the floor area of such building (or size of such structure) occupied or utilized by the use on December 15, 1961; and

WHEREAS, the applicant submits that the proposed enlargement of the accessory convenience store, from 1,264 square feet of floor area to 1,654 square feet of floor area, is permitted pursuant to ZR § 412; and

WHEREAS, the applicant also represents that the gasoline service station and accessory convenience store operate 24 hours per day, seven (7) days per week; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the location of the vacuum on the site, the presence of dumpsters without proper enclosures, and the poor condition of the sidewalks surrounding the site; and

WHEREAS, in response, the applicant revised the plans to relocate the vacuum adjacent to the accessory building extension, provided a dumpster enclosure with solid doors, and agreed to a condition to restore or replace the sidewalks with steel curb edges surrounding the site; and

WHEREAS, by letter dated July 14, 2019, the Fire Department states that a review of their records indicates that the subject site is current with their permits for the storage of combustible liquids, leak detection and fire suppression system (dry-chemical); the installation of new pumps must be filed with the Fire Department for review, approval and permits; the Bureau's Tech Management and Hazardous Materials Unit has been informed of the application and will monitor compliance with applicable rules and regulations of the Department; and, the Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, based upon its review of the record, the Board has determined that the requested amendment is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and

MINUTES

Procedure and *amends* the resolution, dated January 6, 1998, as amended through January 31, 2012, so that as amended this portion of the resolution shall read: “to *permit* an extension of term, of ten (10) years, to expire on January 6, 2028, and an amendment to allow for the enlargement of the existing accessory convenience store building and related site improvements; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 22, 2019”-Seven (7) sheets; and *on further condition*:

THAT the term of the variance shall expire on January 6, 2028;

THAT the sidewalks shall be restored or replaced with metal-faced curbs, as per New York City Department of Transportation standards, as shown on the BSA-approved plans;

THAT the site shall be maintained clear and free of debris and graffiti at all times;

THAT all site lighting shall be directed down and away from nearby residential uses;

THAT asphalt shall be resurfaced or repaired to be maintained in first-rate condition;

THAT all signage on the site comply with C1 district regulations

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 188-96-BZ”), shall be obtained within four (4) years, by October 22, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 22, 2019.

274-00-BZ

APPLICANT –Troutman Sanders LLP, for Carob Bean Realty Corp. II, owner.

SUBJECT – Application June 17, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of office use (UG 6) contrary to underlying use regulations which expired on February 27, 2011; Waiver of the Board’s Rules. R10 Murray Hill Historic District.

PREMISES AFFECTED – 134 East 38th Street, Block 893, Lot 271, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which permitted office occupancy (Use Group (“UG”) 6) and expired on February 27, 2011; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 38th Street, between Park Avenue and Lexington Avenue, in an R10 zoning district and in the Murray Hill Historic District, in Manhattan; and

WHEREAS, the site has approximately 20 feet of frontage along East 38th Street, 25 feet of depth, 499 square feet of lot area and is occupied by an existing four- (4) story plus cellar commercial office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site, and adjacent lots comprising 130-136 East 38th Street, since October 27, 1953, when, under BSA Cal. No. 479-52-BZ, the Board granted a variance to legalize the use of the site as business use (offices) and caretaker’s apartment in a residence use district on condition that in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto other than as modified the same day under BSA Cal. No. 480-52-A; the variance continue only so long as the building is maintained with exterior planting and for the present occupancy of the building now under lease; there be no cooking in the cellar except in the cellar of the most easterly building at the corner of East 38th Street and Lexington avenue, marked "kitchen to be used by caretaker" on plans; the ceiling of

MINUTES

such cellar be fire-retarded; there be a doorway opening from the caretaker's apartment on the fifth floor of such corner building to the adjoining roof for exit purposes only; that any steps necessary to adjust the grade to the roof be constructed and maintained; and, all permits required be obtained and all work completed within six (6) months, by April 27, 1954, and a certificate of occupancy be obtained; and

WHEREAS, on October 27, 1953, under BSA Cal. No. 480-52-A, as to 130-136 East 38th Street, the Board granted an appeal of the decision of the Borough Superintendent, dated June 4, 1952, on condition that the stairways throughout continue to be enclosed with existing partitions; all doors leading to exits be arranged to swing in the direction of exit; there be compliance as to Objection 7; as to Objection 9, there be compliance except that the one (1) kitchen in the most easterly building may be permitted to be continued under the requirements of the resolution adopted the same day under BSA Cal. No. 479-52-BZ; as to Objection 11, no portion of any floor shall be loaded with record files or other equipment beyond the existing capacity of 40 pounds per superficial foot; the requirements of the resolution adopted the same day under Cal. No. 479-52-BZ be complied with; and, the building not be increased in height or area and a certificate of occupancy be obtained; and

WHEREAS, on April 27, 1954, under BSA Cal. No. 479-52-BZ, the Board amended the resolution to extend the time to obtain permits and complete the work on condition that, in view of the statement by the applicant that plans have been approved by the Borough Superintendent but no work had been started, all permits be obtained and all work completed within one (1) year, by April 27, 1955; and

WHEREAS, on May 18, 1954, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution such that the requirement that there be a doorway opening from the caretaker's apartment on the fifth floor of such corner building to the adjoining roof "for exit purposes only" may be modified, on condition that the stairway exits be constructed and maintained as indicated on revised plans filed with the application; a 20-inch iron ladder be constructed against the westerly wall to roof with a scuttle from the top floor to such roof as an additional means of exit; and, in all other respects, the resolution be complied with in all respects; and

WHEREAS, on December 18, 1956, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for three (3) years, to expire on December 18, 1959, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on March 8, 1966, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on March 8, 1971, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained; and

WHEREAS, on June 5, 1973, under BSA Cal. No.

479-52-BZ, the Board further amended the resolution by adding that the premises may be used by a single tenant as an accounting office with a maximum occupancy of 15 persons, substantially as shown on revised drawings filed with the application; the variance may continue for a term of five (5) years, to expire on June 5, 1978, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on June 5, 1973, under BSA Cal. No. 480-52-A, the Board amended the resolution such that the building must comply with the requirements of the resolution adopted the same day under BSA Cal. No. 479-52-BZ; and

WHEREAS, on September 11, 1979, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on September 11, 1984, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year, by September 11, 1980; and

WHEREAS, on March 19, 1985, under BSA Cal. No. 479-52-BZ, the Board amended the resolution, pursuant to ZR §§ 11-411, 11-412 and 11-413, to extend the term for ten (10) years, to expire on September 11, 1994, and to remove the condition in reference to the caretaker's apartment and change the occupancy from accounting office to general offices, on condition that signs be limited to one (1) identification plaque located at front entrance and the size of the plaque be limited to two (2) square feet, and occupancy of the building be limited to no more than 20 persons; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by March 19, 1986; and

WHEREAS, on February 27, 2001, under the subject calendar number, the Board granted a variance to re-establish office use occupancy (UG 6) on condition that all work substantially conform to plans as they apply to the objection, filed with the application; the term of the variance be limited to ten (10) years, to expire on February 27, 2011; signage be provided in accordance with BSA-approved plans; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, in addition, because this application was filed more than two (2) years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(3), of the Board's Rules to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(3) requires a demonstration by the applicant that the use at the subject site has been continuous from the expiration of the term through the filing

MINUTES

of the application and that substantial prejudice would result absent a waiver; and

WHEREAS, the applicant provided copies of utility and tax bills to continuously cover the period of February 2007 through the filing of the application, and states that, absent the waiver of the Board's Rules to permit the filing of the application, the applicant would be severely prejudiced; and

WHEREAS, at hearing, the Fire Department stated that existing conduits for smoke detectors from the hallway must be reused, rewired and extended into the office space; that, due to adjacent non-combustible residences, the Fire Department recommends that a smoke detection system be reinstalled, filed with the Fire Department, reviewed, tested and witnessed by the Fire Department; and, that the sprinklers at the site are operational; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, dated February 27, 2001, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring February 27, 2021; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 18, 2019"-Six (6) sheets; and *on further condition*:

THAT the term of the variance shall expire on February 27, 2021;

THAT smoke detectors shall be extended and installed into the building office spaces;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 274-00-BZ"), shall be obtained within one (1) year, by October 22, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, October 22, 2019.

59-08-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 591-595 Forest Avenue Realty Corp., owner; Push Fitness Club, lessee.

SUBJECT – Application August 21, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Push Fitness Club) on the first and second floors of an existing building which expired on February 14, 2018; Amendment to reflect a change in operator; Waiver of the Rules. C2-1/R3X district.

PREMISES AFFECTED – 591 Forest Avenue, Block 154, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on February 14, 2018, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is bounded by Forest Avenue to the south, Pelton Avenue to the west and Regan Avenue to the east, in an R3X (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 78 feet of frontage along Forest Avenue, 82 feet of frontage along each Pelton Avenue and Regan Avenue, 9,721 square feet of lot area and is occupied by an existing two- (2) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 28, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a physical culture establishment ("PCE"), operated as "Planet Fitness," on portions of the cellar level, first and second floors of the two- (2) story building, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on February 14, 2018; there be no change in the ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the hours of operation of the PCE be limited to: Monday through Friday,

MINUTES

from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; the PCE store its refuse within the building until the time of pick-up; all massages be performed by New York State-licensed massage therapists; the above conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, in addition, because this application was filed more than two (2) years after the expiration of the term, the applicant requests a waiver of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant additionally requests an amendment to permit a change in operator, from "Planet Fitness" to "Push Fitness Center", change in hours of operation, to Monday to Thursday, 5:00 a.m. to 12:00 a.m., Friday 5:00 a.m. to 11:00 p.m., Saturday 7:00 a.m. to 9:00 p.m. and Sunday 8:00 a.m. to 8:00 p.m., and changes to the interior layout of the PCE; and

WHEREAS, the applicant represents that the PCE continues to occupy 11,424 square feet of floor area in the subject building, but no longer offers massage services; and

WHEREAS, by letter dated October 21, 2019, the Fire Department states that the premises are protected by a fire alarm system that was tested satisfactory to Fire Department Rules and Regulations; and, based upon the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, dated October 28, 2008, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring February 14, 2028, a change in operator, hours of operation and interior layout; *on condition* that all work and site conditions shall conform to drawings filed with this

application marked "Received October 22, 2019"-Eight (8) sheets; and *on further condition*:

THAT the term of the grant shall expire on February 14, 2028

THAT there shall be no change in the ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to the following: Monday to Thursday, 5:00 a.m. to 12:00 a.m., Friday 5:00 a.m. to 11:00 p.m., Saturday 7:00 a.m. to 9:00 p.m., and Sunday 8:00 a.m. to 8:00 p.m.

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 59-08-BZ"), shall be obtained within one (1) year, by October 22, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, October 22, 2019.

61-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for B. Bros Broadway Realty, LLC, owner; Crunch LLC, lessee.
SUBJECT – Application May 23, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (Crunch Fitness) on the cellar, mezzanine, first and second floors of a 23-story commercial building which expired on April 22, 2019. M1-6 Special Garment Center District.
PREMISES AFFECTED – 1385 Broadway, Block 813, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on April 22, 2019; and

MINUTES

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the subject site is located on the southwest corner of Broadway and West 38th Street, in an M1-6 zoning district and in the Special Garment Center District, in Manhattan; and

WHEREAS, the site has approximately 104 feet of frontage along Broadway, 175 feet of frontage along West 38th Street, 18,850 square feet of lot area and is occupied by an existing 23-story plus cellar and mezzanine commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 2000, when, under BSA Cal. No. 138-99-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a physical culture establishment (“PCE”) on condition that all work substantially conforms to plans as they apply to the objection, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all individuals practicing massage at the premises possess valid New York State licenses for such practice which licenses be prominently displayed at the premises; fire protection measures, including an automatic wet sprinkler system connected to a Fire Department-approved central station, be provided and maintained in accordance with the BSA-approved plans; and

WHEREAS, on September 17, 2013, under the subject calendar number, the Board granted a new special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE, operated as “Crunch,” on portions of the cellar, first floor, mezzanine and second floor, on condition that all work substantially conform to plans filed with the application; the term of the grant expire on April 22, 2019; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; substantial construction be completed in accordance with ZR § 73-70; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, the applicant represents that the PCE continues to operate as “Crunch” and occupies 20,168 square feet in the subject building on the cellar level (826 square feet of floor space), first floor (1,805 square feet of floor area), mezzanine (1,078 square feet of floor area) and second floor (16,459 square feet of floor area); and

WHEREAS, the applicant additionally represents that, by letter dated September 16, 2019, the landlord of the subject building states the following: they are satisfied with the installation of rubber tiles with sound absorbing feet and steel plates to disperse noise; Crunch moved all weights over 70 pounds to another area of the PCE that is over a mechanical room and removed one (1) lifting platform from the PCE entirely; Crunch installed sound absorbing isolation flooring under the existing lifting platform, and the platform was also moved; “no drop” signs were installed; and, there have been no tenant complaints since Crunch completed the aforementioned sound attenuation measures; and

WHEREAS, by letter dated October 18, 2019, the Fire Department states that these premises are protected by a fire suppression system (sprinkler and standpipe) and a fire alarm system which has been inspected and tested satisfactory according to Fire Department Rules and Regulations; the Bureau’s Licensed Public Place of Assembly unit has inspected these premises and renewed the Place of Assembly permit; and, based upon the foregoing, the Department has no objection to the subject application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated February 8, 2000, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring February 14, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 23, 2019”- Six (6) sheets; and *on further condition*:

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits. Pathways shall always be maintained unobstructed, including from any gymnasium equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act;

THAT fire safety measures be maintained as shown on

MINUTES

the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 61-13-BZ”), shall be obtained within one (1) year, by October 22, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 22, 2019.

429-29-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubricatorium to an accessory convenience store with a drive-thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for adjourned hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

200-98-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 633 Realty LLC, owner; TSI East 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment (New York Sports Club) on portions of the cellar level with entrance and ADA access on the first floor of a 41-story plus cellar commercial building which expired on April 30, 2018; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 633 Third Avenue, Block 1314 Lot(s) 1447, 1449, 1450, 1452 and 1453, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, October 22, 2019.

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – Proposed enlargement of a one family home to a one family home with attic and community facility (UG 3) day care not fronting on a legally mapped street, contrary to General City Law 36. R3-1 zoning district.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

MINUTES

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for adjourned hearing.

2017-99-A

APPLICANT – Sheldon Lobel, P.C., for MM Newtown Capital, LLC, owner.

SUBJECT – Application March 31, 2017 – Proposed construction of a fabric enclosure not fronting on a legally mapped street contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 37-98 Railroad Avenue, Block 312, Lot 279, Borough of Queens.

COMMUNITY BOARD # 2Q

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-244-BZ

CEQR #18-BSA-020X

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 10, 2019, acting on New Building Application No. 220458813, reads in pertinent part:

“Proposed Use Group 4 Church / Community Center . . . is contrary to the underlying zoning requirements for: i. ZR 24-11 (floor area); ii. ZR 24-11 (lot coverage); iii. ZR 24-34 (front yards); iv. ZR 24-35 (side yards); v. ZR 24-521 (height of front wall and required setbacks); and vi. ZR 25-31 (parking)”;

and
WHEREAS, this is an application under ZR § 72-21 to permit, in an R3A zoning district, the development of a community-facility building for use as a house of worship that would not comply with zoning regulations for floor area, lot coverage, front yards, side yards, height of front wall and setbacks, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521, and ZR § 25-31; and

WHEREAS, this application has been brought on behalf of Co-Op City Church, a nonprofit religious institution (the “Religious Institution”); and

WHEREAS, a public hearing was held on this application on September 19, 2017, after due notice by publication in *The City Record*, with continued hearings on February 13, 2018, April 17, 2018, December 11, 2018, February 12, 2019, April 9, 2019, June 4, 2019, July 16, 2019, October 22, 2019, and then to decision on the same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Boller Avenue and Erskine Place, in an R3A zoning district, in the Bronx; and

WHEREAS, the subject site has approximately 40 feet of frontage along Boller Avenue, 190 feet of frontage along Erskine Place, 40 feet of frontage along Hunter Avenue, 7,660 square feet of lot area, and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 8, 2004, when, under BSA Calendar Number 7-04-BZ, the Board granted a variance to permit the construction of a community-facility building for use as a house of worship on condition that the site be maintained free of debris and graffiti and that any graffiti located at the site be removed within 48 hours; and

WHEREAS, by letter dated January 23, 2006, the Board allowed minor changes to the Board-approved drawings to eliminate the approved sub-cellar because of unforeseen soil conditions and the significant cost of

MINUTES

addressing such conditions; and

WHEREAS, on August 19, 2008, the Board granted a three-year extension of time to complete construction; and

WHEREAS, by letter dated November 18, 2016, the Board allowed minor changes to the Board-approved drawings, reducing the floor area of the approved building; and

WHEREAS, because no construction proceeded under the Board's grant, the variance lapsed; and

WHEREAS, the applicant now proposes to develop a three-story community-facility building for use as a house of worship (the "Proposed Building") with 18,904 square feet of floor area (2.47 FAR), 100% lot coverage, no front yards or side yards, a 47'-6" front wall along Boller Avenue, a 38'-0" front wall along Hunter Avenue, and no parking spaces; and

WHEREAS, the applicant submits that, at the subject site, floor area may not exceed 7,660 square feet (1.0 FAR) under ZR § 24-11, lot coverage may not exceed 60% under ZR § 24-11, a front yard must have a minimum depth of 15'-0" under ZR § 24-34, side yards must have minimum depths of 8'-0" under ZR § 24-35, front walls may not exceed a height of 25'-0" with building height governed by a 1:1 sky exposure plane under ZR § 24-521, and one parking space is required for every 10 persons of rated occupancy in the largest assembly room under ZR § 25-31; and

WHEREAS, accordingly, the applicant requests the relief set forth herein; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," ZR § 72-21; and

WHEREAS, the Board acknowledges that the applicant, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the Proposed Building is necessary to accommodate the Religious Institution's programmatic needs and that the Religious Institution's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant supplied a study on the Religious Institution's programmatic needs (the "Programmatic Needs Report"), which indicates that the Religious Institution's program

requires sufficient space for approximately 200 congregants, educational services for 70 children, an after-school program, tutoring services, communal dinners for 125 people, lunches and recreation programs for 100 seniors, counseling services, and a daycare program; and

WHEREAS, the Programmatic Needs Report indicates that developing the subject site as of right would result in a building with an approximately 12'-0" wide building that would not accommodate the Religious Institution's program because there would be insufficient floor area to accommodate a sufficiently sized sanctuary; lot coverage requirements would reduce floorplates and similarly constrain the needed worship space and eliminate other programs (dinner, lunch and recreation, after-school program, counseling, and daycare); yard requirements would eliminate classrooms and counseling offices; height requirements would essentially eliminate the third floor with its classrooms and office, interfering with daycare and after-school programming; and on-site parking would greatly reduce the size of the sanctuary and would displace other elements of the Religious Institution's program; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the Religious Institution's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the Religious Institution is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the Religious Institution's programmatic needs with adequate space for its congregants; and

WHEREAS, the applicant submits that the Proposed Building would not alter neighborhood character, substantially impair adjacent properties, or be detrimental to the public welfare; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding the neighborhood consisting mostly of residential uses with a large parking garage located across Hunter Avenue to the east; and

WHEREAS, with respect to bulk, the applicant notes that there are high-rise buildings in a nearby R6 zoning district and that the parking garage has a height of six stories; and

WHEREAS, as to parking, the applicant submitted a parking demand study indicating that the nearby parking garage contains sufficient unused capacity (between 200 and 500 unused parking spaces on weekends) to meet parking demand generated by the Proposed Building, anticipated to be 42 vehicles on Sundays; and

WHEREAS, the applicant also supplied a letter from the parking garage indicating that its facilities are available to congregants to park; and

WHEREAS, furthermore, the parking demand study

MINUTES

indicates that, during periods of peak demand, hundreds of parking spaces are available on the street in the unlikely event that the parking garage reaches full capacity; and

WHEREAS, the applicant further submits that most congregants live within walking distance: 51% of congregants live within ¼ mile of the subject site, 70% live within one mile, and 87% live within 1 ½ miles; and

WHEREAS, additionally, the applicant proposes to operate a shuttle van to further reduce parking demand generated by the proposed building; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship, and nothing in the record indicates otherwise; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to accommodate the Religious Institution's program, as reflected in the Programmatic Needs Report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS"), CEQR No. 18BSA020X, dated December 4, 2018; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction; and

WHEREAS, by correspondence dated May 3, 2018, the Landmarks Preservation Commission represents that the proposed project would not result in any potential for significant adverse impacts with respect to architectural or archaeological resources; and

WHEREAS, by correspondence dated December 17, 2018, the Department of City Planning represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program policy and determines that the project is consistent with WRP policies; and

WHEREAS, by letter dated June 14, 2019, the Department of Environmental Protection (DEP) states that the applicant must provide the data logs downloaded from the noise meter and the field data sheets (spot traffic count and other field observations) for noise measurement performed April 2, 2019; explain why the 20-minute noise measurements were sufficient for the proposed project location (i.e., number of trains passed by versus the number scheduled for peak train hours, generally recommending one-hour measurements for rail facilities); provide noise calculations supporting the values in the form of a spreadsheet; provide cumulative noise impact calculations; and demonstrate that the proposed acoustical fence in the back of the playground could attenuate any impacts on the upper floor of three-story residential buildings in the vicinity; 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, on condition that the applicant shall continue to work with the Department of Environmental Protection to obtain satisfactory sound attenuation as a result of the rooftop play area, train noise, and bus noise; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant the exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Conditional Negative Declaration based on the foregoing condition prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R3A zoning district, the development of a community-facility building for use as a house of worship that would not comply with zoning regulations for floor area, lot coverage, front yards, side yards, height of front wall and setbacks, and parking, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521, and ZR § 25-31; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received May 15, 2019"—19 sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 18,904 square feet of floor area (2.47 FAR); a maximum of 100% lot coverage; no front yards or side yards; a 47'-6" front wall along Boller Avenue; a 38'-0" front wall along Hunter Avenue; and no parking spaces, as illustrated on the Board-approved drawings;

THAT acoustical fencing be installed as illustrated on the Board-approved drawings;

THAT any modifications requested by the Department of Environmental Protection as to acoustical attenuation

MINUTES

shall be made;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-244-BZ”), shall be obtained within four years, by October 22, 2023;

THAT with respect to the Conditional Negative Declaration, the applicant shall continue to work with the Department of Environmental Protection to obtain satisfactory sound attenuation as a result of the rooftop play area, train noise, and bus noise;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 22, 2019.

2018-136-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.
SUBJECT – Application August 17, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. C8-1/R2A zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108, 80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, October 22, 2019.

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.

SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for deferred decision.

2016-1215-BZ

APPLICANT – Eric Palatnik, P.C., for Ratna Realty Inc., owner.

SUBJECT – Application February 5, 2016 – Variance (§72-21) to permit a non-conforming Use Group 2 in an M1-6 zoning district.

PREMISES AFFECTED – 142 West 29th Street, Block 804, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to March 3, 2020, at 10 A.M. for adjourned hearing.

2017-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cee Jay Real Estate Development Corp., owner.

SUBJECT – Application February 3, 2017 – Variance (§72-21) to permit construction of a three-story, single family residence contrary to ZR §23-45 (Front Yard), ZR § 23-461(a) (Side Yards on Corner Lots), ZR §25-622 (Parking Spaces between the street wall line and street line) and ZR §23-451 (Plantings on Corner Lots). R3-1 zoning district.

PREMISES AFFECTED – 311 Adams Avenue, Block 3679, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2S.I.

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M. for adjourned hearing.

2018-137-BZ

APPLICANT – Eric Palatnik, P.C., for Meir Babaev, owner.

SUBJECT – Application August 17, 2018 – Special Permit (§73-19) to permit the operation of a daycare (*Children of America*) contrary to ZR §32-10. C8-1 zoning district.

PREMISES AFFECTED – 251-77 Jericho Turnpike, Block 8668, Lot(s) 108,80, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

MINUTES

2018-145-BZ

APPLICANT – Akerman, LLP, for Jericho Holdings LLC, owner; 251 Jericho Turnpike Fitness Group, LLC, lessee.
SUBJECT – Application September 7, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) to be located on portions of the first and second floors of a new building contrary to ZR §32-10. C8-1 Zoning District.
PREMISES AFFECTED – 251-73 Jericho Turnpike, Block 8668, Lot 108, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2019-15-BZ

APPLICANT – Akerman LLP, for CS Cooper Avenue LLC, owner.
SUBJECT – Application January 18, 2019– Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Children of America*) contrary to ZR §42-10. M1-1 zoning district.
PREMISES AFFECTED – 79-40 Cooper Avenue, Block 3803, 3804, Lot(s) 39, 1, 39, 164, 178, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M. for continued hearing.

2019-23-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Karass Mulberry 290 LLC, owner.
SUBJECT – Application January 31, 2019– Special Permit (§73-36) to permit the operation of a physical cultural establishment (Martial Arts Family Studio) on portions of the cellar and first floor of an existing 11 story and cellar mixed use residential and commercial building contrary to ZR §32-10.
PREMISES AFFECTED – 290 Mulberry Street aka 41 East Houston Street, Block 590, Lot(s) 19 & 20, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 22, 2019 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

ZONING CALENDAR

2018-181-BZ

CEQR #19-BSA-061M

APPLICANT – Eric Palatnik, P.C., for Izumi Estate Co., Ltd, owner; China Liangtse KG Wellness One LLC, lessee.
SUBJECT – Application November 15, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*China Liangtse Wellness Spa*) on the first floor of a seven-story commercial building contrary to ZR §32-10. C5-2 Special Midtown District.
PREMISES AFFECTED – 150 East 55th Street, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 19, 2018, acting on DOB Alteration Type I Application No. 123383427, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right per ZR 32-31. Secure BSA approval per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C5-2 zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing seven- (7) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application on condition the term be limited to five (5) years; and

WHEREAS, the subject site is located on the south side of East 55th Street, between Lexington Avenue and Third Avenue, within a C5-2 zoning district, in Manhattan;

MINUTES

and

WHEREAS, the site has approximately 38 feet of frontage along East 55th Street, 100 feet of depth, 3,766 square feet of lot area and is occupied by an existing seven-(7) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 9, 2009, when, under BSA Cal. No. 276-08-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of a PCE on a portion of the sixth floor (1,498 square feet) of the subject site, operated by the Beljanski Wellness Center, Inc., on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on June 9, 2019; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State-licensed massage therapists; the conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; substantial construction be completed within four (4) years, by September 9, 2013; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, by letter dated September 28, 2018, the Board approved a change in the ownership and operating control of the subject PCE, from “Beljanski Wellness Center” to “Provence Wellness Center,” as being in substantial compliance with the Board’s prior grant; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*1 is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or

- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 2,730 square feet of floor area on a portion of the first floor seven (7) spa rooms, restrooms, storage, office

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

space, a waiting area, a pantry and a locker room; and

WHEREAS, the PCE has operated as “China Liangtse Wellness Spa” since February 25, 2019, and is open daily from 10:00 a.m. to 9:30 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located within a commercial building, sound attenuation measures will be maintained within the PCE space to ensure that the sound level in other portions of the building does not exceed the maximum noise level of 45 DBA; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is compatible with the uses in the surrounding area, which includes another PCE in the subject building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because there are no residential uses within the subject building and states that the PCE will not produce any negative impacts to the surrounding area; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, monitored by a central supervising station, are maintained within the PCE space; and

WHEREAS, by letter dated October 22, 2019, the Fire Department states that these premises are protected by a sprinkler system and the Fire Department permit is current; the base building fire alarm system was inspected by the Department and the PCE space fire alarm system must be installed to the existing fire alarm system; based upon the foregoing, they have no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II

action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-061M, dated November 20, 2018; and

WHEREAS, the term of the special permit has been reduced to reflect the period of time the PCE operated without approval from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, to legalize the PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C5-2 zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing seven-(7) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 22, 2019”-Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 25, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all massage services shall be performed by New York State-licensed massage therapists only;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2018-181-BZ”), shall be obtained within one (1) year, by October 22, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the

MINUTES

applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 22, 2019.

2018-59-BZ

APPLICANT – Akerman, LLP, for 3030 Equities, LLC, owner; Debrinator, LLC, lessee.

SUBJECT – Application April 25, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Powerhouse Gym*) on a portion of the ground floor of an existing commercial building contrary ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 3030 Northern Boulevard, Block 239, Lot 60, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

2018-66-BZ

APPLICANT – Sheldon Lobel, P.C., for 118 West 72nd Street Retail LLC, owner; Dakota Personal Training LLC, lessee.

SUBJECT – Application May 9, 2018 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (*Dakota Personal Training and Pilates*) with the cellar and first floor of an existing 13-story plus cellar building contrary to ZR §32-10. C4-6A (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 118 West 72nd Street, Block 1143, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

2019-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Rimani Realty LLC, owner.

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for deferred decision.

2019-41-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for Ocean Prime LLC, owner.

SUBJECT – Application March 1, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Life Time*) to be located on a portion of the 1st floor of an existing building contrary to ZR §32-10. C5-5 Special Lower Manhattan District.

PREMISES AFFECTED – 1 West Street, Block 15, Lot 1001, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 29, 2019, at 10 A.M., for decision, hearing closed.

2019-62-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Remainderman 435 Hudson LLC, owner; S10 Training, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*S10*) to be located within the cellar of an existing commercial building with a small lobby entrance on the first floor contrary to ZR §42-10. M1-5(MX-6) zoning district.

PREMISES AFFECTED – 435 Hudson Street, Block 602, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 19, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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November 8, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|--------------------------------------|---------|
| DOCKET | 800 |
| CALENDAR of November 26, 2019 | |
| Morning | 801 |
| Afternoon | 802/803 |

CONTENTS

**MINUTES of Regular Meetings,
Thursday, October 29, 2019**

Morning Calendar804

Affecting Calendar Numbers:

| | |
|-------------|--|
| 75-00-BZ | 60-69 Woodhaven Boulevard, Queens |
| 2017-239-BZ | 47 Doty Avenue, Staten Island |
| 332-79-BZ | 43-20 Little Neck Parkway, Queens |
| 343-12-BZ | 570 East 21 st Street, Brooklyn |
| 2018-47-A | 45 Case Avenue, Staten Island |
| 2019-43-A | 4132 Victory Boulevard, Staten Island |
| 2019-44-A | 4128 Victory Boulevard, Staten Island |
| 2019-46-A | 4124 Victory Boulevard, Staten Island |
| 2019-47-A | 4130 Victory Boulevard, Staten Island |
| 2018-170-A | 51-03 Van Dam Street, Queens |
| 2017-172-A | 10 Maguire Court, Staten Island |
| 2017-243-BZ | 29-16 Francis Lewis Boulevard aka 29-29 172 nd Street, Queens |
| 2017-309-BZ | 406 Remsen Avenue, Brooklyn |
| 2018-25-BZ | 109 Wortman Avenue, Brooklyn |
| 2018-141-BZ | 110-37 68 th Drive, Queens |
| 2018-154-BZ | 966 East 24 th Street, Brooklyn |
| 2018-193-BZ | 1389 East 22 nd Street, Brooklyn |
| 2019-20-BZ | 1933 East 14 th Street, Brooklyn |
| 2019-41-BZ | 1 West Street, Manhattan |
| 2019-49-BZ | 221 North 14 th Street, Brooklyn |
| 2019-50-BZ | 116 Duane Street, Manhattan |
| 2019-59-BZ | 1417 Webster Avenue, Bronx |
| 2019-71-BZ | 2868 Fulton Street, Brooklyn |
| 2018-56-BZ | 83 Coleridge Street, Brooklyn |
| 2018-67-BZ | 7406 Fifth Avenue, Brooklyn |
| 2018-177-BZ | 2061 Ocean Parkway, Brooklyn |
| 2019-7-BZ | 3341 Country Club Road, Bronx |

Afternoon Calendar841

Affecting Calendar Numbers:

| | |
|-------------|---|
| 2019-161-BZ | 55 Prospect Street, Brooklyn |
| 2019-164-BZ | 9 East 16 th Street (9-11 East 16 th Street), Manhattan |
| 2018-91-BZ | 78-80 Leonard Street a/k/a 79 Worth Street, Manhattan |
| 2019-9-BZ | 468 Targee Street, Staten Island |
| 2019-21-BZ | 2223 East 14 th Street, Brooklyn |
| 2019-75-BZ | 704 Broadway, Manhattan |
| 2019-163-BZ | 678 Broadway, Manhattan |
| 2019-178-BZ | 1426 East 24 th Street, Brooklyn |

DOCKETS

New Case Filed Up to October 29, 2019

BLANK

CALENDAR

**REGULAR MEETING
NOVEMBER 26, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 26, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

509-38-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.
SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.
PREMISES AFFECTED – 202-01 Rocky Hill Road aka 202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

335-59-BZ

APPLICANT – Robert Darden R.A., for FLS #1 Atlantic Avenue LLC, owner.
SUBJECT – Application June 7, 2019 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2019. R5 zoning district.
PREMISES AFFECTED – 3485-95 Atlantic Avenue & 315-321 Nichols Avenue, Block 4151, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for GTY-CPG (QNS/BX) Leasing, Inc, owner; Global Partners LP, lessee.
SUBJECT – Application February 21, 2019 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of a Automotive Service Station (UG 16B) (Mobil) which expired on November 26th 2015; Waiver of the Board’s Rules.
PREMISES AFFECTED – 2090 Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

316-08-BZ

APPLICANT – Greenberg Traurig, LLP, by Deirdre Carson, Esq., for Learning Spring School, owner.
SUBJECT – Application July 3, 2019 – Amendment of a previously approved Variance (§72-21) to permit a change in the previously approved site plan to reflect a proposed merger of the school site with an adjacent parcel. C1-5/R9A zoning district.
PREMISES AFFECTED – 345-349 Second Avenue aka 247-249 East 20th Street, Block 901, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.
SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.
PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.
SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, NA-1 zoning district.
PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

2019-166-A

APPLICANT – Law Office of Steven Simicich, for Ancy Mathai, owner.
SUBJECT – Application June 4, 2019 – to permit the construction of a two-story single-family detached home not fronting on a mapped street contrary to General City Law §36. R1-2 & R1-1 Special Natural Area District.
PREMISES AFFECTED – 8 Madigan Place, Block 835, Lot(s) 161, 159, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

REGULAR MEETING NOVEMBER 26, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 26, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2019-27-BZ

APPLICANT – Klein Slowik, PLLC, for Congregation P’Nei Menachem, owner.

SUBJECT – Application February 5, 2019 – Variance (72-21) to permit the development of a house of worship (UG 4) (*Congregation P’nei Menachem*) contrary to ZR 24-35 (minimum required side yards) and ZR 25-31 (parking). R5 zoning district.

PREMISES AFFECTED – 4533 18th Avenue, Block 5439, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2019-60-BZ

APPLICANT – Eric Palatnik, P.C., for WFBH LLC & 7 Fruits LLC, owner.

SUBJECT – Application March 20, 2019 – Special Permit (§73-50) to legalize a 1,566-square foot portion of an existing manufacturing/ warehouse building (Use Group 17) with accessory office space which encroaches into the required 15’ side yard that is required of lots within M1-1 zoning districts that coincide with a side lot line of a zoning lot located within an R4 zoning district contrary ZR §43-301. M1-1 Zoning District.

PREMISES AFFECTED – 132-02 89th Avenue, Block 9361, Lot 20, Borough of Queens.

COMMUNITY BOARD #9Q

2019-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Porter Avenue Holdings LLC, owner; Blink 1134 Fulton, Inc., lessee.

SUBJECT – Application April 23, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) to be located within the first and cellar floors of a proposed cellar and ten-story mixed-use building contrary to ZR §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 1134 Fulton Street, Block 2017, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

2019-88-BZ

APPLICANT – Akerman LLP, for Astoria 31st Street Developers LLC, owner; 92 Fitness Crew New York 4, LLC, lessee.

SUBJECT – Application May 6, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Orangetheory Fitness*) on a portion of the first floor of a seven-story mixed commercial and residential building contrary to ZR §32-10. C4-3 zoning district.

PREMISES AFFECTED – 31-57 31st Street, Block 613, Lot 7502, Borough of Queens.

COMMUNITY BOARD #1Q

2019-159-BZ

APPLICANT – Akerman LLP, for The Dynasty Condominium Board of Managers, owner; Nova Fitness, Inc., lessee.

SUBJECT – Application May 24, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Nova Fitness*) to be located on the first, cellar and sub-cellar floors of a commercial and residential building contrary to ZR §32-10. C6-2A Tribeca East Historic District.

PREMISES AFFECTED – 249 Church Street, Block 174, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

2019-167-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Gold Equities Corp., owner; Blink 2465 Jerome, Inc., lessee.

SUBJECT – Application June 7, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Blink Fitness*) within an existing four-story commercial building contrary to ZR §32-10. C2-4/R6 zoning district.

PREMISES AFFECTED – 2467 Jerome Avenue aka 2465 Jerome Avenue, 1 W Fordham Road, Block 3200, Lot 20, Borough of Bronx.

COMMUNITY BOARD #7BX

2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83rd LLC, owner; The Renaissance Charter School 2, lessee.

SUBJECT – Application July 1, 2019 – Special Permit (§73-19) to permit a school (The Renaissance Charter School) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 45-20 83rd Street and 80-52 47th Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

COMMUNITY BOARD #4Q

CALENDAR

2019-194-BZ

APPLICANT – Terminus Group, LLC, for Theodora Friscia, owner.

SUBJECT – Application July 19, 2019 – Variance (§72-21) to permit the construction of a single-family detached home contrary to ZR 23-461 (side yards). R3-1 zoning district.

PREMISES AFFECTED – 50 Titus Avenue, Block 4033, Lot 94, Borough of Staten Island.

COMMUNITY BOARD #2SI

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
THURSDAY MORNING, OCTOBER 29, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

75-00-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Mercy Drive Inc., owner.

SUBJECT – Application May 30, 2019 – Extension of Term of a previously approve Variance (72-21) which permitted office use (UG 6B) which expires on July 25, 2020. R5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension to the term of a variance, previously granted by the Board pursuant to ZR § 72-21, which permitted the use of the site a Use Group (“UG”) 6 real estate management office use and will expire on July 25, 2020;

WHEREAS, a public hearing was held on this application on October 29, 2019 after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Scibetta performed inspections 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 the east side of Woodhaven Boulevard, between Eliot Avenue and Whetherole Street, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 117 feet of frontage along Woodhaven Boulevard, 108 feet of frontage along Eliot Avenue, 5,780 square feet of lot area and is occupied by an existing one- (1) story plus cellar UG 6 office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 2000, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of a building from a medical office to a real estate management office use on

condition that all work substantially conform to plans as they apply to the objection, filed with the application; the term of the variance be ten (10) years, to expire on July 25, 2010; the cellar and first floor of the premises contain a fire alarm system with a connection to a Fire Department-approved central station; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by July 25, 2004; and

WHEREAS, by letter dated April 25, 2001, the Board permitted changes to the interior layout of the subject site; and

WHEREAS, on February 2, 2010, under the subject calendar number, the Board amended the variance to extend the term for ten (10) years, to expire on July 25, 2020, and to permit the change in use from a Use Group 6 real estate management office to a Use Group 6 office, on condition that any and all work substantially conform to plans filed with the application; the conditions be listed on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance to expire, the applicant now seeks an extension; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of term of a variance; and

WHEREAS, the applicant represents that the ownership of the building has changed, but continues to be operated as a Use Group (“UG”) 6 office; and

WHEREAS, at hearing, the Board questioned whether the new user of the site caused a change in the traffic to the site, as trip generation was a concern in the Board’s prior grant; and

WHEREAS, in response, the applicant represented that the site operates as a satellite call center office in conjunction with its other sites and does not disturb the concerns or findings of the prior Board with respect to traffic; and

WHEREAS, at hearing, the Board received testimony from a neighborhood resident, stating that the subject site is operated in a very good manner and generates less traffic than its predecessor; and

WHEREAS, by letter dated October 26, 2019, the Fire Department states that they inspected the premises and found it to be in compliance with all Department Rules and Regulations; the premises are protected by an interior fire

MINUTES

alarm system with a central office connection which was found to be in service at the time of inspection; and, the Fire Department has no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 25, 2000, as amended through February 2, 2010, so that as amended this portion of the resolution shall read: “to *permit* an extension to the term of ten (10) years, to expire on July 25, 2030; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 30, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the variance be ten (10) years, to expire on July 25, 2030;

THAT the Use Group 6 office shall be a use that produces very minimal traffic and parking needs;

THAT fire safety measures be maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 75-00-BZ”), shall be obtained within one (1) year, by October 29, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 29, 2019.

2017-239-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 47 Doty Avenue, Block 3124, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment of a special permit, previously granted by the Board pursuant to ZR § 64-92, to waive bulk requirements for the reconstruction of a home damaged/destroyed by Superstorm Sandy for a property registered in the NYC Build it Back Program; and

WHEREAS, a public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Doty Avenue, between Robin Road and Father Capodanno Boulevard, in an R3-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Doty Avenue, 45 feet of depth, 1,800 square feet of lot area and is occupied by a two- (2) story single family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 22, 2017, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 64-92, to permit, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; on condition that all work substantially conform to the drawings filed with the application; there be a front yard at least 13 feet in depth, as illustrated on the Board-approved plans; the residence be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed have a floor assembly that provides a two- (2) hour fire resistance rating; the height from grade plane to the highest windowsill leading to a habitable space not exceed 32 feet; the foundation system have a two- (2) hour fire resistance rating in accordance with Section 601 of the New York City Building Code; the exterior walls, ceilings and interior floors have one- (1) hour fire resistance ratings; the approval be limited to the Build It Back program; all Department of Buildings (“DOB”) and related agency application(s) filed in connection with the authorize use and/or bulk be signed off by DOB and all other relevant agencies by August 22, 2021; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not

MINUTES

related to the relief granted; and

WHEREAS, the applicant seeks an amendment to the grant to permit a front yard with ten (10) feet of depth and a rear yard with 12 feet of depth—where the Board previously approved a 13-foot deep front yard and ten- (10) foot deep rear yard—and an increase in the floor area, from 900 square feet (0.5 floor area ratio (“FAR”)) to 914 square feet (0.51 FAR); and

WHEREAS, ZR § 64-92 states that the Board “may permit modification of . . . applicable bulk regulations of the Zoning Resolution, except *floor area ratio* regulations”; nothing herein shall be read as permitting the modification of FAR, and DOB must ensure that the subject building complies accordingly; and

WHEREAS, by letter dated October 29, 2019, the Fire Department states that a review of the plans and statement of facts demonstrate that the constructed enclosed foundation with a podium floor system as constructed has a two- (2) hour rated underside assembly (UL G356) and the premises is classified as construction class 1B, and they have no objection to the application; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated August 22, 2017, so that as amended this portion of the resolution shall read: “to *permit* an amendment to legalize as-built conditions on the site with respect to the depths of the front yard and rear yard; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 3, 2019”-Four (4) sheets; and *on further condition*:

THAT this approval does not waive underlying zoning requirements related to floor area and floor area ratio (“FAR”);

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-239-BZ”), shall be obtained within one (1) year, by October 29, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other

relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 29, 2019.

332-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Northern Spots LLC, owner.

SUBJECT – Application June 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and maintenance of an accessory parking facility which expired on February 13, 2015; Waiver of the Board’s Rules. R2A zoning district.

PREMISES AFFECTED – 43-20 Little Neck Parkway, Block 8129, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for adjourned hearing.

343-12-BZ

APPLICANT – Slater & Beckerman, P.C., for Kolel Beis Yakov LLC, owner; Ocean Avenue Education Support, Inc., lessee.

SUBJECT – Application July 23, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a Use Group 3 school (Brooklyn School for Medically Frail Children) with dormitory facilities which expires on July 28, 2019. R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M. for continued hearing.

APPEALS CALENDAR

2018-47-A

APPLICANT – Jeffrey Geary, for Philip Deangelis, owner.

SUBJECT – Application March 30, 2018 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011.

PREMISES AFFECTED – 45 Case Avenue, Block 6670, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Dismissed for failure to prosecute.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and

MINUTES

Commissioner Scibetta.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew a building permit issued by the Department of Buildings (“DOB”), acting on Alteration Application No. 510060247 (the “Alteration Application”), before the effective date of an amendment to the Zoning Resolution, which has lapsed as a result of such amendment; and

WHEREAS, a public hearing was held on this application on June 11, 2019, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2019, and then to decision on October 29, 2019; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, by letter dated May 4, 2018, the Board issued a notice of comments based on the project manager’s review of this application; and

WHEREAS, by letter dated September 10, 2018, the Board issued a second notice of comments based on the project manager’s review of this application, reflecting issues that the applicant had not addressed; and

WHEREAS, the hearings scheduled for February 5, 2019, and March 26, 2019, were postponed, and the hearing scheduled for August 13, 2019, was administratively adjourned for failure to make a complete submission; and

WHEREAS, by letter dated August 14, 2019, the applicant was notified that no further adjournments would be permitted and that failure to make a complete submission and appear at the hearing scheduled for October 29, 2019, might result in denial of this application; and

WHEREAS, the applicant failed to make a complete submission and appear at the hearing; and

WHEREAS, accordingly, because of the repeated failure of the applicant and its representatives to submit materials in support of this application, it must be dismissed in its entirety.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* the application filed under BSA Calendar Number 2018-47-A for failure to prosecute.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-43-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Abdulhay NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4132 Victory Boulevard, Block 2636, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 11, 2019, acting on New Building Application No. 520361821, reads in pertinent part:

“GCL 36, BC 502.1, BC 501.3.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a building that does not front on a mapped street; and

WHEREAS, this application was heard in conjunction with BSA Cal. Nos. 2019-44-A, 2019-46-A and 2019-47-A, corresponding to tax lots 41, 43 and 39, respectively; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Victory Boulevard and Roswell Avenue, in an R3A (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 27 feet of frontage along Victory Boulevard, 100 feet of frontage along Roswell Avenue, 2,712 square feet of lot area and is vacant; and

WHEREAS, Victory Boulevard has a width of approximately 34 feet at the subject site and is accessible from the mapped portion of Victory Boulevard; and

WHEREAS, by correspondence dated August 20, 2019, the Office of the Borough President indicates that Victory Boulevard is paved to a width between 50 and 66 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated November 17, 1925, as in-use, and Roswell Avenue is paved to a width of 50 feet and is unmapped, but has a Corporation Counsel Opinion, dated November 4, 1925, as in-use for a width of 50 feet; and

MINUTES

WHEREAS, the applicant proposes to develop the site with a three- (3) story with cellar mixed-use residential (second and third floors) and commercial (first floor) building fronting on Victory Boulevard, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district, including those related to the Lower Density Growth Management Zone and ZR § 32-11, which requires Use Group 1 and 2 uses to be located in mixed-use buildings; and

WHEREAS, by letter dated October 17, 2019, the New York City Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there are eight- (8) inch diameter sanitary sewer, 12-inch diameter and 20-inch diameter City water mains in Victory Boulevard between Roswell Avenue and Melvin Avenue; the Drainage Plan No: D-8, Sheet 3 of 4, shows eight- (8) inch diameter sanitary and 12-inch diameter storm sewers at the above referenced location; the proposed sanitary and storm will be discharged as per the Site Connection Proposal (SCP) # 10887; water service will be connected to the City water main in Victory Boulevard fronting the above referenced property; it is anticipated that the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard will be maintained by the owners and will not be maintained by the City of New York; and, based on the above, DEP has no objections to the application; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Victory Boulevard and Roswell Avenue was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, the Fire Department represented no objection to the subject application; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated February 11, 2019, acting on New Building Application No. 520361821, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 30, 2019”-One (1) sheet; and *on further condition*:

THAT the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard, shall be maintained by the owners and

will not be maintained by the City of New York

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-43-A”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-44-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Travis SI NY LLC, owner.

SUBJECT – Application March 13, 2019 – Proposed development of a three-story, mixed-use building with commercial use on the ground floor and dwelling units on the second and third floors on a site not fronting on a mapped street contrary to General City Law §36.

PREMISES AFFECTED – 4128 Victory Boulevard, Block 2636, Lot 41, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 11, 2019, acting on New Building Application No. 520361803, reads in pertinent part:

“GCL 36, BC 502.1, BC 501.3.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;

B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

MINUTES

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a building that does not front on a mapped street; and

WHEREAS, this application was heard in conjunction with BSA Cal. Nos. 2019-43-A, 2019-46-A and 2019-47-A, corresponding to tax lots 38, 43 and 39, respectively; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Victory Boulevard, between Roswell Avenue and Melvin Avenue, in an R3A (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 28 feet of frontage along Victory Boulevard, 100 feet of depth, 2,750 square feet of lot area and is vacant; and

WHEREAS, Victory Boulevard has a width of approximately 34 feet at the subject site and is accessible and is accessible from the mapped portion of Victory Boulevard; and

WHEREAS, by correspondence dated August 20, 2019, the Office of the Borough President indicates that Victory Boulevard is paved to a width between 50 and 66 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated November 17, 1925, as in-use; and

WHEREAS, the applicant proposes to develop the site with a three- (3) story with cellar mixed-use residential (second and third floors) and commercial (first floor) building fronting Victory Boulevard, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district, including those related to the Lower Density Growth Management Zone and ZR § 32-11, which requires Use Group 1 and 2 uses to be located in mixed-use buildings; and

WHEREAS, by letter dated October 17, 2019, the New York City Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there are eight- (8) inch diameter sanitary sewer, 12-inch diameter and 20-inch diameter City water mains in Victory Boulevard between Roswell Avenue and Melvin Avenue; the Drainage Plan No: D-8, Sheet 3 of 4, shows eight- (8) inch diameter sanitary and 12-inch diameter storm sewers at the above referenced location; the proposed sanitary and storm will be discharged as per the Site Connection Proposal (SCP) # 10885; water service will be connected to the City water main in Victory Boulevard fronting the above referenced property; it is anticipated that the water service connection to the City water main in Victory Boulevard, and the

proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard will be maintained by the owners and will not be maintained by the City of New York; and, based on the above, DEP has no objections to the application; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Victory Boulevard was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, the Fire Department represented no objection to the subject application; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated February 11, 2019, acting on New Building Application No. 520361803, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 30, 2019”-One (1) sheet; and *on further condition*:

THAT the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard, shall be maintained by the owners and will not be maintained by the City of New York

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-44-A”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

MINUTES

2019-46-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ARTANK43, LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 4124 Victory Boulevard, Block 2636, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 15, 2019, acting on New Building Application No. 520361796, reads in pertinent part:

“GCL 36, BC 502.1, BC 501.3.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a building that does not front on a mapped street; and

WHEREAS, this application was heard in conjunction with BSA Cal. Nos. 2019-43-A, 2019-44-A and 2019-47-A, corresponding to tax lots 38, 41 and 39, respectively; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Victory Boulevard, between Roswell Avenue and Melvin Avenue, in an R3A (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 28 feet of frontage along Victory Boulevard, 100 feet of depth, 2,750

square feet of lot area and is vacant; and

WHEREAS, Victory Boulevard has a width of approximately 34 feet at the subject site and is accessible and is accessible from the mapped portion of Victory Boulevard; and

WHEREAS, by correspondence dated August 20, 2019, the Office of the Borough President indicates that Victory Boulevard is paved to a width between 50 and 66 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated November 17, 1925, as in-use; and

WHEREAS, the applicant proposes to develop the site with a three- (3) story with cellar mixed-use residential (second and third floors) and commercial (first floor) building fronting Victory Boulevard, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district, including those related to the Lower Density Growth Management Zone and ZR § 32-11, which requires Use Group 1 and 2 uses to be located in mixed-use buildings; and

WHEREAS, by letter dated October 17, 2019, the New York City Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there are eight- (8) inch diameter sanitary sewer, 12-inch diameter and 20-inch diameter City water mains in Victory Boulevard between Roswell Avenue and Melvin Avenue; the Drainage Plan No: D-8, Sheet 3 of 4, shows eight- (8) inch diameter sanitary and 12-inch diameter storm sewers at the above referenced location; the proposed sanitary and storm will be discharged as per the Site Connection Proposal (SCP) # 10884; water service will be connected to the City water main in Victory Boulevard fronting the above referenced property; it is anticipated that the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard will be maintained by the owners and will not be maintained by the City of New York; and, based on the above, DEP has no objections to the application; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Victory Boulevard was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, the Fire Department represented no objection to the subject application; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated February 15, 2019, acting on New Building Application No. 520361796, under the

MINUTES

powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 24, 2019”-One (1) sheet; and *on further condition*:

THAT the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard, shall be maintained by the owners and will not be maintained by the City of New York

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-46-A”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-47-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for YSE 39, LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 4130 Victory Boulevard, Block 2636, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 15, 2019, acting on New Building Application No. 520361812, reads in pertinent part:

“GCL 36, BC 502.1, BC 501.3.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a building that does not front on a mapped street; and

WHEREAS, this application was heard in conjunction with BSA Cal. Nos. 2019-43-A, 2019-44-A and 2019-46-A, corresponding to tax lots 38, 41 and 43, respectively; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Victory Boulevard, between Roswell Avenue and Melvin Avenue, in an R3A (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 28 feet of frontage along Victory Boulevard, 100 feet of depth, 2,750 square feet of lot area and is vacant; and

WHEREAS, Victory Boulevard has a width of approximately 34 feet at the subject site and is accessible and is accessible from the mapped portion of Victory Boulevard; and

WHEREAS, by correspondence dated August 20, 2019, the Office of the Borough President indicates that Victory Boulevard is paved to a width between 50 and 66 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated November 17, 1925, as in-use; and

WHEREAS, the applicant proposes to develop the site with a three- (3) story with cellar mixed-use residential (second and third floors) and commercial (first floor) building fronting Victory Boulevard, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district, including those related to the Lower Density Growth Management Zone and ZR § 32-11, which requires Use Group 1 and 2 uses to be located in mixed-use buildings; and

WHEREAS, by letter dated October 17, 2019, the New York City Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there are eight-

MINUTES

(8) inch diameter sanitary sewer, 12-inch diameter and 20-inch diameter City water mains in Victory Boulevard between Roswell Avenue and Melvin Avenue; the Drainage Plan No: D-8, Sheet 3 of 4, shows eight- (8) inch diameter sanitary and 12-inch diameter storm sewers at the above referenced location; the proposed sanitary and storm will be discharged as per the Site Connection Proposal (SCP) # 10886; water service will be connected to the City water main in Victory Boulevard fronting the above referenced property; it is anticipated that the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard will be maintained by the owners and will not be maintained by the City of New York; and, based on the above, DEP has no objections to the application; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Victory Boulevard was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, the Fire Department represented no objection to the subject application; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated February 15, 2019, acting on New Building Application No. 520361812, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 24, 2019”-One (1) sheet; and *on further condition*:

THAT the water service connection to the City water main in Victory Boulevard, and the proposed storm discharge and sanitary connection to the sanitary sewer in Victory Boulevard, shall be maintained by the owners and will not be maintained by the City of New York

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2019-47-A”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2018-170-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Van Dam Specialty & Promotion Inc., owner; Clear Channel Outdoor, Inc., lessee.

SUBJECT – Application October 30, 2018 – Appeal of a NYC Department of Buildings determination that a sign does not comply with the provisions of ZR §42-55c.

PREMISES AFFECTED – 51-03 Van Dam Street, Block 305, Lot 17, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for postponed hearing.

2019-172-A

APPLICANT – Eric Palatnik, P.C., for John Deluca and Lilian Deluca, owners.

SUBJECT – Application June 11, 2019 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior R3-2 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 10 Maguire Court, Block 6977, Lot 350, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.

SUBJECT – Application August 17, 2017 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard aka 29-29 172nd Street, Block 4938, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 28, 2017, acting on Alteration Type I Application No. 421425381, reads in pertinent part:

“Referral to the BSA to extend the term of the variance which expired on December 16, 2015 and to legalize the existing convenience store and plans which are contrary to previous BSA approval under BSA Calendar # 212-50-BZ”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which permitted the use of the site as a gasoline service station and expired on December 16, 2015, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with continued hearings on September 10, 2019, and October 29, 2019, and then to decision on same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the Board was also in receipt of testimony from a civic organization within whose boundaries the subject site is located, raising concerns regarding the maintenance of the site, but confirming that such concerns have been addressed and stating no objection to the application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application, and four (4) form letters in opposition to the application citing concerns regarding a truck rental operation at the subject site; and

WHEREAS, the subject site is bounded by Francis Lewis Boulevard to the north, 172nd Street to the west, in an R2A zoning district, in Queens; and

WHEREAS, the site has approximately 237 feet of frontage along Francis Lewis Boulevard, 183 feet of frontage along 172nd Street, 151 feet of depth along its southern lot line, 13,801 square feet of lot area and is occupied by an existing automotive service station with five (5) off-street accessory parking spaces and an existing one (1) story accessory convenience store containing 3,700 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 5, 1950, when, under BSA Cal. No. 212-50-BZ, the Board granted a variance, for a term of 15 years, to permit the premises to be occupied as a

store, auto showroom for new and used cars, motor vehicle repairs, wheel alignment and service, lubritorium, car washing, salesroom and parts department, and gasoline service station, on condition that the proposed auto showroom, gasoline service station and one- (1) family residence be constructed at one time; the front yard width of 40 feet for the full depth from 172nd Street to Francis Lewis Boulevard be occupied solely by a one- (1) family residence and be set back from 172nd Street equal to the set back of the adjoining houses; the residence be in keeping as to design and construction with such adjacent homes; the portion of the plot adjoining such 40 feet along 172nd Street within the residence use area not be occupied as a portion of the gasoline station construction but be kept planted and made available for use with the proposed one- (1) family residence; the balance of the plot may be constructed for the uses as proposed in “Scheme A” plan; there be no openings or curb cuts to 172nd Street; the accessory building and showroom be of the design proposed on revised plans filed with Scheme A and be constructed of face brick throughout and be arranged as indicated and in all other respects comply with all laws, rules and regulations applicable thereto; the boiler room be separated from the balance of the building by fireproof construction and entered only from the exterior; along the 172nd Street building line and returning to Francis Lewis Boulevard, as shown, there be constructed a brick masonry wall properly coped and to a height of not less than 5’-6”; the number of gasoline storage tanks not exceed eight (8) 550-gallon tanks; the pumps be of the approved low parkway design and erected not nearer than ten (10) feet from their base to the street building line of Francis Lewis Boulevard; curb cuts be restricted to three (3), as indicated, none wider than 30 feet; at the intersection of 172nd Street and Francis Lewis Boulevard there be a planted area, as indicated, properly protected with curbing and planted with material as may be approved by the Department of Parks; sidewalks and curbing on the streets adjoining the premises be constructed to the satisfaction of the Borough President; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; the balance of the plot where not occupied by the proposed one- (1) family residence, landscaping, accessory building, pumps and walls be surfaced with concrete or bituminous paving; signs be restricted to permitted signs within the business use area, except for the portion of the plot to be occupied for residence, and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs, but permitting the erection within the building line near the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not over four (4) feet; such sign be located southerly of the cross-wall from 172nd Street to Francis Lewis Boulevard; minor repairs with hand tools only may be permitted within the accessory building; any openings facing 172nd Street be filled with glass blocks as approved for exterior walls; there be no opening along the

MINUTES

rear of the accessory building to the adjoining portion of the premises where the one- (1) family dwelling is to be constructed; complete working drawings be submitted for consideration by the Board before same are filed with the Borough Superintendent; such plans be filed within three (3) months, by March 5, 1951; after approval of such plans, all permits required be obtained and all work completed within one (1) year thereafter; and

WHEREAS, on January 23, 1951, under BSA Cal. No. 212-50-BZ, the Board approved plans as being in substantial compliance with the 1950 resolution, with the further requirement that the design for the proposed one- (1) family residence be filed with the Board for consideration and approval under the terms of the resolution; and

WHEREAS, on July 10, 1951, under BSA Cal. No. 212-50-BZ, the Board amended the resolution such that the cross wall near the intersection of 172nd Street and Francis Lewis Boulevard may be stepped down to heights as indicated on revised plans filed with the application on condition that such wall be of brick as previously required and properly coped; and, in all other respects the resolution be complied with; and

WHEREAS, on April 12, 1955, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution such that in the event the owner has complied with the requirements of the resolution and constructed a dwelling on 172nd Street adjoining the proposed gasoline service station and desires to sell such dwelling, nothing therein contained interfere with such sale on condition that the stipulations in the deed of sale require that the dwelling be continued under the requirements of the resolution adopted by the Board under BSA Cal. No. 212-50-BZ; and

WHEREAS, on July 8, 1958, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to record a new owner and to permit new gasoline pumps of a low approved type in place of the parkway type pumps on condition that in all other respects the resolution be complied with; and

WHEREAS, on January 7, 1964, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution such that the easterly portion of the building may be used for a retail store as permitted in Use Group 6, substantially as shown on revised drawings filed with the application, on condition that the milk and ice machines be removed from the premises and other than as amended the resolution be complied with in all respects; and

WHEREAS, on July 16, 1968, under BSA Cal. No. 212-50-BZ, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten (10) years, to expire on December 5, 1975, and to permit a total of 12 550-gallon approved gasoline storage tanks and two (2) pump islands with three (3) approved pumps on each island, substantially as shown on revised drawings submitted with the application, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on December 16, 1975, under BSA Cal.

No. 212-50-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on December 16, 1985, on condition that the sidewalks in front of the premises along Francis Lewis Boulevard and along 172nd Street be paved for their full width in accordance with the rules and regulations of the Department of Highways; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on February 4, 1986, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to extend the term for ten (10) years, to expire on December 16, 1995, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by February 4, 1987; and

WHEREAS, on June 25, 1995, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to permit the elimination of the retail store located on the zoning lot by reducing the size of the existing accessory canopy over four (4) new concrete pump islands and the relocation of two (2) curb cuts and extend the term for ten (10) years, to expire on December 16, 2005, on condition that the northernmost pump be closed after 10:00 p.m.; there be no sales of used cars or automatic car washing; the loudspeaker system be turned down after 10:00 p.m.; signs be posted advising patrons to "turn off car radios;" the premises remain graffiti-free; signs be in accordance with BSA-approved plans; all area lights be directed downward and away from adjacent residential uses; street trees be planted in accordance with BSA-approved plans; two (2) new curb cuts on Francis Lewis Boulevard be installed in accordance with BSA-approved plans and the curbs restored at the location of the curb cuts previously approved by the Board; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed and a new certificate of occupancy be obtained within one (1) year, by July 25, 1996; and

WHEREAS, on November 29, 2005, under BSA Cal. No. 212-50-BZ, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten (10) years, to expire on December 16, 2015, on condition that the use substantially conform to drawings filed with the application; all graffiti on site be removed; all landscaping be installed and/or maintained as shown on the BSA-approved plans; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived remain in effect; all signage comply with applicable C1 district regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning

MINUTES

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten (10) years each; and

WHEREAS, the applicant also seeks an amendment to legalize changes to signage and the conversion of the existing accessory building to an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed sales area of the accessory convenience store is 737 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,450 square feet); and

WHEREAS, the applicant does not propose to enlarge, extend or relocate the existing one- (1) story accessory building, and, instead, proposes interior alterations and non-structural site modifications as are permitted pursuant to ZR § 11-412; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the truck rental operation on site, excessive light levels at the lot line, the presence of tires and items for sale outside of the building, and a dumpster without proper enclosure; and

WHEREAS, in response, the applicant represented that the truck rental operation was discontinued at the site and is no longer proposed, and provided evidence to demonstrate the presence of zero (0) light levels at the lot line, the removal of tires and items for sale outside of the building, the removal of extraneous signage, and the dumpster relocated inside of an enclosure; and

WHEREAS, by letter dated March 9, 2019, the Fire Department stated that a review of their records indicates that the subject site is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and fire suppression (dry-

chemical) system and the Fire Department has no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, adopted December 5, 1950 under BSA Cal. No. 212-50-BZ, as amended through November 29, 2005, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring December 16, 2025, and to *legalize* the conversion of the accessory building to an accessory convenience store; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received August 22, 2019"-Seven (7) sheets; and *on further condition*:

THAT the term of the variance shall expire on December 16, 2025;

THAT the landscaping and asphalt shall be repaired or replaced, as shown on BSA-approved plans, to be maintained in first-rate condition;

THAT lighting shall be directed down and away from nearby residential uses, as shown on BSA-approved plans;

THAT signage shall comply with BSA-approved plans;

THAT the trash shall be stored in an enclosure, as shown on BSA-approved plans;

THAT there shall be no sale of products outside of the accessory building;

THAT there shall be no storage of hazardous materials on site;

THAT there shall be no tires stored outside of the accessory building;

THAT the site shall be maintained clean and free of debris and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions not specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-243-BZ"), shall be obtained within one (1) year, by October 29, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or

MINUTES

configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 29, 2019.

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedures and a reinstatement of a variance, previously granted by the Board, to allow the continued use of the subject site for manufacturing, servicing, and sales of auto accessories; auto repairs with hand tools only; machine shop; service station; lubritorium; minor auto repairs; car washing; office and sales; and parking and storage of motor vehicles; and

WHEREAS, based on serious concerns with unsafe conditions, abysmal site maintenance, and disregard for the safeguards and conditions imposed by the Board, the Board denies this application; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on January 15, 2019, February 12, 2019, April 9, 2019, and June 25, 2019, and then to decision on October 29, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 17, Brooklyn, recommends disapproval of this application, citing concerns with health and safety as a result of the property owner’s dogs that frighten seniors, children, and pedestrians and the use of water hoses to remove fecal matter; the lack of bathroom facilities; the types of enforcement the owners have in place for the tenants’ failure to keep the streets and surrounding areas clean; any penalty language in the lease agreement between the owner and tenants that addresses the consequences for failure to upkeep the site; the lease agreement has the tenant’s name spelled incorrectly, which could result in failure to enforce the lease; the presence of garbage and construction debris seen stockpiled from the

street starting from 406–416 Remsen Avenue; the failure to move vehicles for alternate side street cleaning; vehicle repairs’ being conducted on East 58th Street; parking of vehicles after repair on East 58th Street; vehicles parked on East 58th Street being moved (i.e., reversed) in an unsafe manner on East 58th street; vehicles parked in the crosswalk impeding walkway access for pedestrians; auto repair shop staff and customers parking vehicles in driveways of nearby residents; parking of vehicles associated with auto body shop impeding ambulances and also making the street too narrow for Fire Department vehicles to freely drive down said street; oil deposits and grease stains left on sidewalk at East 58th Street and Remsen Avenue; serviced vehicles being illegally double parked on street making it difficult for pedestrians to maneuver between vehicles and property owners to gain access to their driveways; harassment of senior residents who complain and associated threats; customers waiting for repaired vehicles trespassing on the property located at 8 East 58th Street where customers are seen sitting on the entry stairs; auto repair employees parking vehicles in the space in front of 8 East 58th Street resulting in one of the vehicles blocking the crosswalk; the owners disavowing any responsibility for disposing litter left in front of the site, dismissing it as the result of mass transit commuters; and an overall callous disregard for the affected residents; and

WHEREAS, the subject site is located on the southwest corner of Remsen Avenue and Lenox Road, west of East 58th Street, in an R6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 75 feet of frontage along Lenox Road, 103 feet of frontage along Remsen Avenue, 46 feet of frontage along East 58th Street, 17,464 square feet of lot area, and is occupied by a one-story, with cellar, building used for manufacturing, servicing, and sales of auto accessories; auto repairs (hand tools only); machine shop; service station; lubritorium; minor auto repairs; car washing; office and sales; and parking and storage of motor vehicles; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 28, 1953, when, under BSA Calendar Number 438-29-BZ, the Board granted a variance for a term of ten years to allow the addition of motor vehicle repairs and sale and display of more than five new and used cars to the permitted uses of machine shop, manufacturing and servicing of auto accessories, sale of auto accessories, parking of patrons’ cars waiting to be serviced, and office on condition that the existing building and uses not be extended except as permitted; that the building not be increased in height or area; that all windows along the rear of the building on the lot line or facing the portion of the site in the residence use district be filled with glass block as approved for exterior walls, substituting such for all the existing steel frame hinged windows then in use; that the rear portion of the site to the north within the residence use district be protected with a woven wire fence not less than 5’-6” in height on the lot line and with a wall of similar height from

MINUTES

the lot line at the south to the corner of the building; that such space in the residence use district be landscaped and kept in neat and clean condition at all times; that there may be within the building an additional use of motor vehicle repairing where required in connection with the rebuilding of motors, with hand tools only; that the balance of the site be paved with concrete or asphaltic pavement and the portion of the site to the north may be occupied for the parking of cars being serviced and for the sale and display of new and used motor vehicles toward the front of such portion of the site; that in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; that the curb cuts not be increased, except that there may be an additional curb cut to East 58th Street where shown, not over 20 feet in width; that the sidewalks and curbs around the site be repaired or reconstructed to the satisfaction of the borough president; that fire-fighting appliances be maintained as the fire commissioner directs; that along the building line of the portion of the plot to be occupied for the parking and sale of cars, there be erected a masonry wall not less than 2 feet in height, except for the width of the 20 foot curb cut; and that signs comply with the requirements of the Zoning Resolution therefor; and

WHEREAS, on October 27, 1953, under BSA Calendar Number 438-29-BZ, the Board granted an extension of time to complete construction on condition that, in view of the statement by the applicant that plans had been approved and that the work has been substantially completed, that all work be completed and a certificate of occupancy obtained in accordance with the Zoning Resolution; and

WHEREAS, on December 7, 1957, under BSA Calendar Number 438-29-BZ, the Board amended the variance to allow the erection of an extension to the existing building and extend the existing use to include car washing, lubricatorium, minor auto repairs, storage, office and sales, gasoline service station, and the parking and storage of motor vehicles so that, in addition to the uses hereinbefore permitted, there may also be gasoline pumps and twelve 550-gallon approved tanks on condition that the accessory building along the southerly lot line may be extended for the use shown on the Board-approved drawings; and

WHEREAS, on November 29, 1960, under BSA Calendar Number 438-29-BZ, the Board granted an extension of time to complete construction of one year; and

WHEREAS, on November 28, 1961, under BSA Calendar Number 438-29-BZ, the Board granted an extension of time to complete construction in accordance with the Zoning Resolution; and

WHEREAS, on November 16, 1963, under BSA Calendar Number 438-29-BZ, the Board extended the term of the variance by ten years on condition that a certificate of occupancy be obtained; and

WHEREAS, on April 3, 1973, under BSA Calendar Number 438-29-BZ, the Board granted an extension of term of ten years on condition that a new certificate of occupancy

be obtained; and

WHEREAS, on June 14, 1983, under BSA Calendar Number 438-29-BZ, the Board granted an extension of term of ten years on condition that the manufacturing and machine shop uses must be an accessory use to the auto repair shop and that this station be operated at all times in such a fashion so as to minimize traffic congestion; and

WHEREAS, on October 6, 1997, under BSA Calendar Number 438-29-BZ, the Board extended the term of the variance by ten years and amended the variance to legalize the elimination of gasoline sales; to allow the maintenance of the automotive repair services and machine shop on condition that all repairs of motor vehicles occur within the building; that the signs conform to the Board-approved drawings; that the trees and landscaping be installed and adequately maintained; that outdoor storage not be permitted; that the site be maintained free of graffiti and debris and in substantial compliance with the Board-approved drawings; and that a new certificate of occupancy be obtained within one year; and

WHEREAS, on January 12, 1999, under BSA Calendar Number 438-29-BZ, the Board granted an extension of time to obtain a certificate of occupancy and an amendment such that no street trees are required along the Remsen Avenue and Lenox Road frontages; that the dumpster may remain along the boundary of 8 East 58th Street so long as the owner of 8 East 58th Street continue to assent; that the site comply with the Board-approved drawings and that a new certificate of occupancy be obtained within one year; and

WHEREAS, on September 28, 1999, under BSA Calendar Number 438-29-BZ, the Board granted an extension of term of ten years on condition that the site remain graffiti free at all times; that all signs be maintained in accordance with the Board-approved plans that the site be maintained in substantial compliance with the Board-approved drawings; and that a new certificate of occupancy be obtained within one year; and

WHEREAS, on December 10, 2002, under BSA Calendar Number 438-29-BZ, the Board considered possible rescindment of the resolution after receiving complaints alleging non-compliance with the variance—including that the site was being used as a largescale automobile facility, equipped with outdoor car lifts, large banners and flags, that garbage was being stored outside, that signage exceed what had been approved by the Board, that the operator was illegally storing and selling vehicles, that soundproofing had been removed, and that work with power tools and heavy machinery was being performed outside—after which the applicant provided an action plan and photographs illustrating the site was in compliance with the Board's resolution along with an affidavit stating that all guard dogs had been removed and landscaping installed in the area that previously housed the dogs; and the Board found that the applicant had submitted adequate documentation demonstrating substantial compliance with the Board's prior grant on condition that the site not be

MINUTES

equipped with outdoor car lifts, large banners or flags, that all garbage be stored inside, that signage not exceed what had been approved by the Board; that there be no storing or selling of vehicles, that soundproofing be provided and maintained, and that all repairs be performed indoors; and

WHEREAS, the term having expired, the applicant now seeks a reinstatement and a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, at hearing, the Board considered concerns expressed by Community Board 17 and heard credible testimony from area residents, who painted a picture of a site maintained in total disregard for the surrounding area—with chained-up dogs, illegally stored debris, litter, oil leaks, and unsanitary sidewalks; and

WHEREAS, three of the Board's commissioners and the Board's compliance officer performed inspections of the site, and the record reflects photographic evidence corroborating community concerns; and

WHEREAS, the subject site has also been the subject of enforcement action by the Department of Buildings and is subject to a stipulation under OATH Index No. 162525, noting that "inspections conducted by agents of the Commissioner . . . revealed that the premises has been used [for] boat repair and storage, automobile repairs, contractor's yards, and for junk salvage storage" and that "the premises is therefore subject to closure pursuant to . . . the Padlock Law"; and

WHEREAS, the Fire Department states in a letter dated December 19, 2018:

On December 14, 2018 members of the Bureau of Fire Prevention visited the above noted premises to conduct an inspection of the motor vehicle repair shop. During the course of our inspection, we had contacted Battalion 58, Ladder 174, the Department of Buildings Emergency Response Team (DOB ERT) and the NYS Department of Environmental Conservation (NYS DEC) to assist in our inspection.

Based on our inspection the following conditions were found:

- 1) Accumulation of debris of rubbish/combustible waste at the rear yard
- 2) Unlawful storage of portable gas cans with a capacity of more than 2 ½ gallons
- 3) Failure to provide fire extinguishers throughout
- 4) Failure to provide approved covers for opened junction boxes
- 5) Illegal storage of portable fueled equipment (kerosene space heater)
- 6) Illegal storage of portable LPG (propane) containers
 - a. Eleven—20lbs
 - b. One—5lbs
 - c. Two—30lbs.
 - d. Six—33.5lbs

- 7) Illegal storage of flammable gas containers
 - a. Three—100lbs.

The above noted gas containers have been confiscated by the fire department's HAZ-Mat unit. The Bureau of Fire Prevention has written three criminal summonses and one FDNY summons (formerly known as Notice of Violations) for these premises.

The New York City Fire Code limits the amount of LPG and flammable gases that may be stored at a specific site. If premises require more than one permissible amount, the owner or his representative must obtain a permit from the fire department and have qualified personnel with a certificate of fitness, issued by the fire department, on site. There were no qualified personnel on site at the time of our inspection.

Violations and summonses were also issued by the DOB ERT and NYS DEC . . . Violations issued by DOB ERT were for illegal construction blocking means of egress. Violations issued by NYS DEC were for the improper storage and containment of motor oil. It was observed that motor oil was leaking from the containers and seeping into the public sewer system.

It is our recommendations to the Board, if any extension of the term of the variance is issued that as a conditions of the variance that the owner install a fire alarm system and a sprinkler (high-hazard) system, all individuals using flammable and combustible gases be certificate of fitness holders and permits obtained from the fire department for storage and use of such gasses.; and

WHEREAS, the Fire Department states in a letter dated February 7, 2019, that it recommends "that at a minimum a sprinkler system be installed at these premises and that the open ceiling be protected by a one-hour rated ceiling construction"; and

WHEREAS, by letter dated March 25, 2019, the applicant states that "pursuing the current variance is not economically or logistically feasible" but requests "that the board adjourns this case until the end of the calendar year at which time I will withdraw my application for the variance"; and

WHEREAS, no request to withdraw this application has been made, nor was evidence proffered demonstrating any meaningful attempts to comply with the safeguards and conditions imposed by the Board in granting the variance; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the requested reinstatement is inappropriate and that the applicant has not substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* this application.

MINUTES

Adopted by the Board of Standards and Appeals,
October 29, 2019.

2018-25-BZ

APPLICANT – Eric Palatnik, P.C., for 109 Wortman LLC, owner.

SUBJECT – Application February 16, 2018 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District.

PREMISES AFFECTED – 109 Wortman Avenue, Block 4368, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda.....1

Negative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....4

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 9, 2018, acting on New Building Application No. 321682639, reads in pertinent part:

“ZR 44-21: the number of accessory parking spaces that shall be provided for Use Group 4A ambulatory diagnostic or treatment health care facility use do not comply with ZR 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M1-1 zoning district, a reduction in the number of accessory off-street parking spaces required for an ambulatory diagnostic or treatment facility (Use Group 4), contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with continued hearings on August 13, 2019, October 22, 2019, and then to decision on October 29, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Wortman Avenue, between Pennsylvania Avenue and Sheffield Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along Wortman Avenue, 95 feet of depth, 3,800 square feet of lot area and is occupied by a parking lot and trailer; and

WHEREAS, the applicant proposes to develop a new three-story, with cellar, community-facility building for use as an ambulatory diagnostic or treatment facility (Use Group 4) with 8,347 square feet of floor area; and

WHEREAS, an as-of-right development of this size requires 28 parking spaces under ZR § 44-21; and

WHEREAS, however, the applicant proposes no parking spaces; and

WHEREAS, the applicant asserts that the total elimination of parking for the proposed development is lawful under ZR § 44-23 but provides no DOB decision to that effect; regardless, this special-permit application is not an interpretive appeal, *cf.* ZR § 72-11, and the Board’s review of this application need not be confined to the standards applicable to as-of-right construction; and

WHEREAS, ZR § 73-44 provides, in pertinent part, that:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

**REDUCED ACCESSORY OFF-STREET
PARKING SPACES REQUIRED FOR
AMBULATORY DIAGNOSTIC
OR TREATMENT FACILITIES LISTED IN
USE GROUP 4 AND
COMMERCIAL USES IN PARKING
REQUIREMENT CATEGORY B1**

| Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> * | Districts |
|--|---|
| 1 per 400 | C1-1 C2-1 C3 C4-1 |
| 1 per 600 | C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1 |
| 1 per 800 | C1-3 C2-3 C4-3 C7 C8-2 |

* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, the Zoning Resolution vests the Board

MINUTES

with wide discretion to “permit specified [parking] modifications” “[i]n harmony with the general purpose and intent of this Resolution and in accordance with the provisions set forth in this Chapter,” ZR § 73-01, and the Board’s determination herein is subject to and guided by ZR §§ 73-01–73-04; and

WHEREAS, the Board may reduce the required parking for an ambulatory diagnostic or treatment facility (Use Group 4) at the subject site from one space per 300 square feet of floor area to one space per 600 square feet of floor area—thereby reducing parking from 28 spaces to 14 spaces for the proposed development; and

WHEREAS, however, the Board must also find that “the hazards or disadvantages to the community at large such ... modification of ... parking ... regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such ... modification of ... parking ... regulations will be minimized by appropriate conditions governing location of the site, design and method of operation,” ZR § 73-03(a); and

WHEREAS, for years, in determining applications for parking reductions, the Board has generally required parking-demand studies prepared by traffic and parking engineers to be based on data supplied by the Department of Transportation because of this expert agency’s strong credibility with respect to traffic and parking and because of the overall reliability and accuracy of this data source; and

Whereas, on numerous occasions, at multiple hearings, the Board requested that the applicant provide a set of drawings illustrating that 14 parking spaces would be provided on site; and

Whereas, the applicant refused; and

Whereas, the applicant also failed to demonstrate parking demand of fewer than 14 parking spaces; and

WHEREAS, at hearing, the Board discussed the lack of credibility of the applicant’s parking-demand studies: the first study claims a demand of 36 spaces (more than zoning requires), and the second study claims a demand of 5 spaces; and

WHEREAS, the first study utilizes standard Department of Transportation methodology and analytical data in reaching its conclusion that demand exceeds zoning requirements by 8 spaces; and

WHEREAS, on the other hand, the second study uses an unconventional methodology with an erratic data set that results in a scattered array of outlier results; and

WHEREAS, the Board heavily relies on Department of Transportation modal split and analytical data in considering applications and only in rare circumstances allows applicants to rely on data that looks at the specific operations of a proposed facility; and

WHEREAS, even assuming both studies had equal credibility, the applicant would have merely demonstrated parking demand of 21 spaces—far in excess of the 14 spaces

requested by the Board; and

WHEREAS, at hearing, the Board explained its longstanding policy that parking demand be met on site as a safeguard that ensures that “disadvantages to the community at large” be “outweighed by the advantages to be derived by community” with “adverse effects ... minimized,” ZR § 73-03(a); and

WHEREAS, in response, the applicant furnished anecdotal evidence—a single set of Board-approved drawings and a few resolutions (out of 46 applications since 1998)—that the applicant asserts means the Board has misrepresented its own policy and instead has a policy of facilitating total parking waivers under ZR § 44-23; and

WHEREAS, contrary to the applicant’s claims, the Board’s longstanding policy that parking demand be met dates back at least five years; and

WHEREAS, the applicant wholly mischaracterizes the decisions in those resolutions, which are distinguishable from the applicant’s proposed development of a new building on a lot as large as the subject site; and

WHEREAS, in the resolutions furnished by the applicant and the associated Board-approved drawings showing no on-site parking, for instance, one site had an existing 28-foot-wide office building to be enlarged where adding on-site parking would be physically impossible and where parking demand was demonstrated to be only 10 parking spaces; another site reflected an L-shaped existing office building with 20 feet and 24 feet of frontage with an existing medical practice to be enlarged where adding on-site parking would be physically impossible and where parking demand was demonstrated to be only 3 parking spaces; and a third was a 25-foot-wide lot where it would be impossible to provide a parking garage along with required fire stairs, two means of egress, and an elevator lobby to the office building above and where parking demand was demonstrated to be only 4 spaces (because of the operation of a related practice within close walking distance); and

WHEREAS, notably, the fourth application involved an existing building to be converted to ambulatory care where the applicant committed to providing the balance of parking demand at an off-site location; and

WHEREAS, the applicant also refused to acknowledge examples of any of the numerous instances where the Board has required parking demand to be met on site and required drawings to demonstrate that parking demand would be; and

WHEREAS, of 46 cases decided since 1998, it appears there were only two other cases where a further parking waiver were issued by DOB under ZR §§ 44-23 or 36-23 after the Board granted a parking reduction—one of which provided parking on site, as illustrated on the Board-approved drawings, the other of which provided partial parking demand on site with the remainder provided through off-site spaces; and

WHEREAS, accordingly, the applicant’s assertions about Board policy are self-serving and not credible in light of the Board’s actual practices; and

WHEREAS, lastly, the Board notes that the applicant’s

MINUTES

refusal to provide the drawings requested essentially eviscerates the Board’s ability to review this application; and

WHEREAS, in other cases, the Board takes a critical eye and may find room for the addition of further parking spaces where it finds that parking demand or an absence of on-street parking justifies the need; and

WHEREAS, here, however, the applicant’s refusal deprives the Board of that crucial review process; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the requested parking reduction is not appropriate and that the applicant has not substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that this application shall be and it hereby is *denied*.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2018-141-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Davidov, owner.

SUBJECT – Application August 28, 2018 – Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district.

PREMISES AFFECTED – 110-37 68th Drive, Block 2227, Lot 48, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 29, 2019.

2018-154-BZ

CEQR #19-BSA-038K

APPLICANT – Law Office of Lyra J. Altman, for Simcha Gruenburg and Libby Gruenburg, owners.

SUBJECT – Application October 11, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district.

PREMISES AFFECTED – 966 East 24th Street, Block 7587, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 6, 2018, acting on Alteration Type I Application No. 321621624, reads in pertinent part:

1. “Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to Zoning Resolution Section 23-461 in that the proposed side yard is less than the minimum required; and
4. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two- (2) story plus cellar and attic single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 25, 2019 after due notice by publication in *The City Record*, with continued hearings on August 13, 2019, and October 29, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue I and Avenue J, within an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 24th Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar and attic single-family detached residence and existing garage; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and

MINUTES

- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the

neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a two- (2) story plus cellar and attic single-family detached residence with 0.73 FAR (2,915 square feet of floor area), 89% OSR (2,593 square feet of open space), two (2) side yards with widths of 9'-9-1/2" and 4'-2-1/2", and a rear yard with a depth of 24'-2-1/4"; and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the single-family detached residence resulting in a two- (2) story plus cellar and attic single-family detached residence with 1.0 FAR (3,999 square feet of floor area), 58% OSR (2,321 square feet of open space), two (2) side yards with widths of nine (9) feet and 4'-2-1/2", and a rear yard with a depth of 20 feet at the first floor, 24'-2-1/4" at the second floor, and 24'-8" at the attic; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 150% OSR (3,000 square feet of open space assuming a complying 0.5 FAR) is required, two (2) side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,407 square feet to 1,679 square feet, the second floor from 1,166 square feet to 1,561 square feet, and the attic from 343 square feet to 760 square feet; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two- (2) family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 90 qualifying residences for which data was provided, 66 residences (73 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.56, and nine (9) residences have an FAR of 1.0 or greater; and

WHEREAS, the applicant submitted a rear yard study demonstrating that, on the subject block, 31 interior lots (100 percent) have rear yards with depths less than 30 feet, ranging from two (2) feet to 27 feet, and 14 lots (45 percent)

MINUTES

have rear yards with a depth of 20 feet or less; and

WHEREAS, the proposed enlargement includes an extension of the existing non-complying northern side yard, and, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-038K, dated October 11, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing two- (2) story plus cellar and attic single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “October 10, 2019”-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.0 FAR (3,999 square feet of floor area), a minimum of 58% OSR (2,321 square feet of open space), and a rear yard with minimum depths of 20 feet at the first floor, 24’-2-1/4” at the second floor, and 24’-8” at the attic, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-154-BZ”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2018-193-BZ

CEQR #19-BSA-065K

APPLICANT – Law Office of Lyra J. Altman, for Moshe Brodt and Rina Brodt, owners.

SUBJECT – Application December 4, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1389 East 22nd Street, Block 7658, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 4, 2018, acting on Alteration Type I Application No. 321661199, reads in pertinent part:

1. “Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to Zoning Resolution Section 23-461 in that the proposed side yards are less than the minimum required; and

MINUTES

4. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two- (2) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on August 6, 2019 after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 22nd Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a two- (2) story plus cellar single-family detached residence with 0.54 FAR (2,167 square feet of floor area), 130% OSR (2,182 square feet of open space), two (2) side yards with widths of 4'-3-1/4" and 12'-8", and a rear yard with a depth of 30'-5-1/2"; and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the single-family detached residence

MINUTES

resulting in a two- (2) story plus cellar and attic single-family detached residence with 0.99 FAR (3,961 square feet of floor area), 61% OSR (2,418 square feet of open space), two (2) side yards with widths of 4'-3-1/4" and 8'-9", and a rear yard with a depth of 20 feet at all floors; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 150% OSR (3,000 square feet of open space assuming a complying 0.5 FAR) is required, two (2) side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,188 square feet to 1,582 square feet, the second floor from 979 square feet to 1,401 square feet, and create an attic with 978 square feet of floor area; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two- (2) family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 101 qualifying residences, 80 residences (79 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.05, and 14 residences have an FAR of 0.99 or greater; and

WHEREAS, the applicant submitted a rear yard study demonstrating that, on the subject block, 21 interior lots (62 percent) have rear yards with depths less than 30 feet, ranging from 0 feet to 28 feet, and ten (10) lots (29 percent) have rear yards with a depth of 20 feet or less, including the dwellings adjacent to the subject site to the south and to the rear, which have rear yards with depths of 19 feet and 20 feet, respectively; and

WHEREAS, the proposed enlargement includes an extension of the existing non-complying 4'-3-1/4" northern side yard, and, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-065K, dated December 6, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing two- (2) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio ("FAR"), open space ratio ("OSR"), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 10, 2019"-Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.99 FAR (3,961 square feet of floor area), a minimum of 61% OSR (2,418 square feet of open space), and a rear yard with a minimum depth of 20 feet at the first floor and above, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-193-BZ"), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

MINUTES

2019-20-BZ

CEQR #19-BSA-078K

APPLICANT – Law Office of Lyra J. Altman, for Albert Shayek and Sophia Shayek, owners.

SUBJECT – Application January 25, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47). R5 zoning district.

PREMISES AFFECTED – 1933 East 14th Street, Block 7293, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 4, 2019, acting on Alteration Type I Application No. 321904613, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R5 zoning district:

1. Creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R5 zoning district, the enlargement of an existing two- (2) story plus cellar and attic single-family detached residence that does not comply with zoning regulations for rear yards contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on August 6, 2019 after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 14th Street, between Avenue S and Avenue T, within an R5 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 14th Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two- (2) story plus cellar and attic single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building’s non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

MINUTES

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a two- (2) story plus cellar and attic single-family detached residence with a rear yard with a depth of 37'-7-1/2"; and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the single-family detached residence resulting in a three- (3) story plus cellar single-family detached residence with a rear yard with a depth of 20 feet at the first floor and 24 feet of depth above; and

WHEREAS, at the subject site, a rear yard with a minimum depth of 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant submitted a rear yard study demonstrating that, on the subject block, 19 interior lots containing single- or two- (2) family residences (61 percent) have rear yards with depths less than 30 feet, ranging from 13 feet to 29 feet, and five (5) lots have rear yards with a depth of 20 feet or less, including the lot adjacent to the south of the subject site which has a rear yard with a depth of 20 feet; and

WHEREAS, the applicant notes that the proposed enlargement includes a vertical and horizontal extension of the existing 2'-6" northern side yard, including a proposal to decrease the depth of the existing non-complying side yard by adding external insulating wall material, and represents that, pursuant to a 1929 Belcher Hyde Desk Atlas and 1950 Sanborn Map including the subject site, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, argues that the side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, the Board takes no position as to the lawfulness of the proposal to decrease the depth of the existing non-complying side yard by adding external insulating wall material and, accordingly, DOB must ensure that any enlargement within the northern side yard complies with zoning regulations applicable to side yards; and

WHEREAS, based upon its review of the record and

inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-078K, dated January 28, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing two- (2) story plus cellar and attic single-family detached residence that does not comply with zoning regulations for rear yards contrary to ZR § 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 10, 2019"-Nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard with a minimum depth of 20 feet at the first floor and 24 feet above, as illustrated on the Board-approved plans;

THAT the Department of Buildings must ensure compliance of the existing non-complying side yard with respect to any added external insulating wall material;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-20-BZ"), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

MINUTES

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-41-BZ

CEQR #19-BSA-099M

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for Ocean Prime LLC, owner.

SUBJECT – Application March 1, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Life Time*) to be located on a portion of the 1st floor of an existing building contrary to ZR §32-10. C5-5 Special Lower Manhattan District.

PREMISES AFFECTED – 1 West Street, Block 15, Lot 1001, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 31, 2019, acting on DOB Alteration Type I Application No. 123481936, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right per section ZR 32-10 and ZR 32-31 and is referred to the Board of Standards and Appeals for a special permit;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-5 zoning district and in the Special Lower Manhattan District, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 31-story with cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is bounded by West Street to the west, Washington Street to the east and Battery Place

to the south, within a C5-5 zoning district and in the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 364 feet of frontage along West Street, 181 feet of frontage along Battery Place, 64,633 square feet of lot area and is occupied by an existing 31-story with cellar and sub-cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 14,470 square feet of floor area on a portion of the first floor with areas for exercise, boxing, locker rooms and offices; and

WHEREAS, the PCE is proposed to operate as “Life Time” and proposes to operate daily, from 5:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant states that sound attenuation measures will be installed and maintained within the PCE space to minimize sound and vibration disturbances caused by the operation of the PCE; these measures include: a spring-isolated suspended ceiling and shaft wall enclosures filled with batt insulation around the group fitness rooms, and sound isolating floating floors throughout; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is compatible with the surrounding area, which is characterized by ground floor retail uses and other commercial spaces located on a heavily traveled commercial and retail thoroughfare; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has

performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will provide a significant amenity to local residents; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including manual pull stations at each required exit, area smoke detectors, local audible and visual alarms and connection of the interior fire alarm system to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated October 9, 2019, the Fire Department states that the premises are protected by a combination fire suppression (sprinkler and standpipe) system and fire alarm system that has been tested satisfactory to Fire Department Rules and Regulations; the Fire Department notes that applications for the fire alarm system and sprinklers have been filed with DOB for the space; an application for a Place of Assembly permit must be filed prior to occupancy of the space; and, based on the foregoing, the Fire Department has no objection to the application as the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations and

WHEREAS, over the course of hearings, the Board raised concern regarding whether the PCE would be adequately sound attenuated; and

WHEREAS, in response, the applicant represented that the PCE hired a sound engineer to ensure that the installation of isolated ceilings and specialized flooring materials were designed in such a way as to prevent the transmission of sound disturbances caused by music and vibration disturbances caused by the use of weights and treadmills; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-099M, dated March 6, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, to permit the PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR

MINUTES

Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-5 zoning district and in the Special Lower Manhattan District, the operation of a physical culture establishment on a portion of the first floor of an existing 31-story with cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 29, 2019”-Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 29, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including manual pull stations at each required exit, area smoke detectors, local audible and visual alarms and connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-41-BZ”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-49-BZ

CEQR #19-BSA-102K

APPLICANT – Jay Goldstein, Esq., for 1 Nassau Owner LLC, owner; Vital East LLC, lessee.

SUBJECT – Application August 13, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Vital Climbing Gym) contrary to ZR §42-10. M1-1 and M1-2 zoning districts.

PREMISES AFFECTED – 221 North 14th Street, Block 2639, Lot(s) 7&9, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 8, 2019, acting on DOB Alteration Type I Application No. 321383926, reads in pertinent part:

“Proposed Physical Culture Establishment in M1-1, M1-2 Zoning district is not permitted as-of-right as per section ZR 42-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-1 zoning district, a physical culture establishment (“PCE”) on the first and second floors of a two- (2) story building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley Brown, and Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is bounded by North 15th Street and Banker Street to the east, Nassau Avenue to the south, and North 14th Street to the east, within an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 45 feet of frontage along North 15th Street, 195 feet of frontage along Banker Street, 125 feet of frontage along Nassau Avenue, 145 feet of frontage along North 14th Street, and is occupied by an existing two- (2) story building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings

MINUTES

are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, the Board makes no findings under ZR § 73-36(b); and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the

building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 28,085 square feet of floor area on the first floor with a lobby, indoor climbing areas, party room, fitness area, outdoor terrace/patio, restrooms, office, storage and mechanical space; and 3,266 square feet of floor area on the second floor with spaces for yoga, spin and sauna; and

WHEREAS, the PCE is proposed to operate as “Vital Climbing Gym,” operating daily, 24 hours per day; and

WHEREAS, the applicant states that, while the PCE is proposed to be the only tenant in the subject building, sound attenuation measures have been taken to minimize the impact of the PCE on nearby uses; these measures include: rock climbing structures built away from exterior party walls, dense foam in climbing area fall zones, rubber flooring in the first floor fitness area and spin studio, and sound attenuating partitions in the second floor exercise spaces; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located entirely within a building, in an area characterized by commercial and manufacturing uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it will be consistent with the nearby commercial uses; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations, local audible connection of the interior fire alarm system to an FDNY-approved central station—will be maintained within the PCE space; and

WHEREAS, by letter dated August 10, 2019, the Fire

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

Department states that the Bureau's Construction Demolition and Abatement (CDA) unit is currently on site while construction is in progress; when work has been completed, all applicable units in the Bureau of Fire Prevention will conduct their required inspections; the Fire Department has no objection to the Board's rendering a decision on the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce all rules and regulations of the Department; and

WHEREAS, over the course of hearings, the Board raised concern that the terrace/patio space at the first floor, within an M1-1 zoning district, constitutes accessory PCE space on the roof of a commercial building and, pursuant to ZR § 73-36(b), is not permitted under the special permit; and

WHEREAS, while the applicant represents that the outdoor space at the first floor is not on the roof of the building, the Board takes no position as to lawfulness of the first floor outdoor terrace space and defers to the jurisdiction and enforcement thereof to the Department of Buildings; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as 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") Short Form, CEQR No. 19BSA102K, received March 18, 2019; and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or, Construction; and

WHEREAS, the Board has determined that the operation of the physical culture establishment at the premises will not have a significant adverse impact on the environment; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on the first floor and second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, prepared in

accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-1 zoning district, the operation of a proposed physical culture establishment on the first and second floors of a two-(2) story building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 28, 2019"-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 29, 2029;

THAT the Department of Buildings must ensure compliance of the first floor outdoor space with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations, local audible connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-49-BZ"), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

MINUTES

2019-50-BZ

CEQR #19-BSA-103M

APPLICANT – Jay Goldstein, Esq., for DLMC Inc., owner; Trinity Boxing and Athletic Club Inc., lessee.

SUBJECT – Application March 18, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Trinity Boxing*) on portions of the cellar, first and mezzanine level of an existing building contrary to ZR §42-10. C6-2A zoning districts.

PREMISES AFFECTED – 116 Duane Street, Block 150, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 14, 2019, acting on DOB Alteration Type I Application No. 123675585, reads in pertinent part:

“Proposed physical culture establishment in C6-2A zoning district is contrary to section 32-10 ZR and requires a special permit from the BSA (73-36);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, a physical culture establishment (“PCE”) on portions of the cellar level, first second floor and mezzanine of an existing five- (5) story with cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of letters in support and in opposition to the subject application; and

WHEREAS, the subject site is located on the south side of Duane Street, between Church Street and Broadway, within a C6-2A zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along Duane Street, 117 feet of depth, 2,917 square feet of lot area, and is occupied by an existing five- (5) story with cellar and mezzanine mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in

certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 2,917 square feet of floor space in the cellar with accessory storage space; 2,917 square feet of floor area on the first floor with areas for reception, heavy bags and a boxing ring, lockers, restrooms and changing rooms; and 250 square feet of floor area on the mezzanine level with accessory storage space; and

WHEREAS, the PCE began operation in October 2016, as "Trinity Boxing," operating daily, from 5:30 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, while no weights are used in the PCE space and the PCE does not use amplified sound, sound attenuation measures have been taken to minimize the impact of the PCE on nearby residential uses; these measures include: acoustical partitions in the ceiling providing an STC rating in excess of 60, sealed with acoustical sealant; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located entirely within an existing building and does not attract significant additional traffic to the surrounding area; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located in an area characterized

by a mix of residential, commercial and community facility uses that is already heavily trafficked and accessed by patrons who walk or use mass transit; and

WHEREAS, the applicant states that a sprinkler will be maintained within the PCE space; and

WHEREAS, by letter dated August 12, 2019, the Fire Department states no objection to the application; and

WHEREAS, over the course of hearings, the Board raised concern regarding the noise and vibration impact of the PCE to residential tenants of the subject building; and

WHEREAS, the applicant submits that, in response to concerns by the Board and residential tenants of the subject building regarding noise and vibration impacts, a 24-hour acoustical analysis was performed in a second floor apartment above the PCE, from October 3, 2019, to October 4, 2019, detecting a 0.3dBA change in sound level from the PCE operation, below the threshold of perception, and represents that the noise and vibration levels did not exceed the relevant standards contained in New York City Noise Code and ANSI S2.71; and

WHEREAS, the Board was in receipt of no further testimony in opposition to the subject application at the hearing; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-103M, dated May 24, 2019; and

WHEREAS, the term of the special permit has been reduced to reflect the period of time the PCE has operated without Board approval; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the cellar level, first floor and mezzanine level, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C6-2A zoning district, the operation of a proposed physical culture establishment on the cellar level, first second floor and mezzanine of an existing five- (5) story with cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 28, 2019"-Four (4) sheets; and *on further condition*:

MINUTES

THAT the term of the PCE grant will expire on October 1, 2026;

THAT noise and vibration levels shall be maintained below perceptible levels so as to protect nearby residential occupants;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-50-BZ”), shall be obtained within one (1) year, by October 29, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-59-BZ

CEQR #19-BSA-105X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1421 Webster Avenue, LLC, owner; Blink Webster Avenue Inc., lessee.

SUBJECT – Application March 19, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Blink Fitness) located on the first and second floor of a new commercial building contrary to ZR §32-10. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1417 Webster Avenue, Block 2887, Lot 142, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 8, 2019, acting on DOB New Building Application No. 321917146, reads in pertinent part:

“ZR 32-1: Proposed Physical Culture Establishment in C2-4 Zoning district is contrary to section ZR32-10 and requires a special permit from BSA (73-36);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an R7-1 (C2-4) zoning district, a physical culture establishment (“PCE”) on portions of the first and second floors of a proposed two- (2) story with cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on October 29, 2019; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, the Bronx, recommends approval of this application; and

WHEREAS, the Board was also in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the west side of Webster Avenue, between East 170th Street and East 171st Street, within an R7-1 (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 125 feet of frontage along Webster Avenue, 82 feet of depth, 10,484 square feet of lot area and will be occupied a proposed two- (2) story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such

MINUTES

special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*¹ is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by

ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 8,956 square feet of floor area on the first floor with exercise areas, locker rooms with bathrooms and showers, and space for storage and mechanical; and 5,538 square feet of floor area on the second floor with exercise areas; and

WHEREAS, the PCE is proposed to operate as “Blink Fitness,” with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m.; and, Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building and is anticipated to be the only tenant, sound attenuation materials are maintained within the PCE to ensure that sound levels in other portions of the building do not exceed 45 dBA, including that emanating from any sound system; these measures include: batt insulation in demising walls of the PCE and rubber flooring in various areas of the PCE; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located on Webster Avenue, a busy commercial thoroughfare providing access to the nearby comparable commercial buildings containing commercial uses including restaurants, markets, dry cleaners and other similar commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

not impact the privacy, quiet, light and air of the neighborhood and anticipates that the proposed PCE will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—will be maintained within the PCE space; and

WHEREAS, by letter dated September 26, 2019, the Fire Department states that applications for the fire alarm system and public assembly space must be filed with the Department of Buildings borough office prior to occupancy of the space; they have no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-105X, dated March 19, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on portions of the first floor and second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an R7-1 (C2-4) zoning district, the operation of a proposed physical culture establishment on portions of the first and second floors of a proposed two- (2) story with cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 19, 2019”- Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 29, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1

and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-59-BZ”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2019-71-BZ

CEQR #19-BSA-114K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2862-2874 Fulton Street LLC, owner; Blink 2862 Fulton Street, Inc., lessee.

SUBJECT – Application April 5, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Blink Fitness) to be located on the first and second floor of an existing commercial building. C2-4 (R6A) (EC6) zoning district.

PREMISES AFFECTED – 2868 Fulton Street, Block 3950, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 6, 2019, acting on DOB Application No. 32107086, reads in pertinent part:

“Proposed Physical Culture establishment in C2-4

MINUTES

Zoning district is contrary to section 32-10 ZR and requires a special permit from BSA (73-36);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an R6A (C2-4) zoning district and in the Special Enhanced Commercial District, a physical culture establishment (“PCE”) on portions of the first and second floors of a proposed two- (2) story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on October 29, 2019; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of Fulton Street and Barbey Street, within an R6A (C2-4) zoning district and in the Special Enhanced Commercial District, in Brooklyn; and

WHEREAS, the site has approximately 94 feet of frontage along Fulton Street, 82 feet of frontage along Barbey Street, 8,440 square feet of lot area and is occupied by four (4) existing one- (1) story commercial buildings that will be renovated and enlarged into a single proposed two- (2) story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 6,653 square feet of floor area on the first floor with exercise areas, locker rooms with restrooms and showers, and spaces for storage and offices; and 8,402 square feet of floor area on the second floor with exercise areas; and

WHEREAS, the PCE is proposed to operate as “Blink Fitness,” with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m.; and, Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building and is anticipated to share the building with only one (1) other commercial tenant, sound attenuation materials will be maintained within the PCE to ensure that sound levels in other portions of the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

building do not exceed 45 dBa, including that emanating from any sound system; these measures include: batt insulation in demising walls of the PCE and rubber flooring in various areas of the PCE; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located on Fulton Street, a busy commercial thoroughfare with comparable commercial buildings containing commercial uses including restaurants, laundromats, beauty salons and other commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the proposed PCE will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, including connection of the interior fire alarm system to an FDNY-approved central station, will be maintained within the PCE space; and

WHEREAS, by letter dated September 26, 2019, the Fire Department states that applications for the fire alarm system and public assembly space must be filed with the Department of Buildings borough office prior to occupancy of the space; they have no objection to the application, and the Bureau of Fire Prevention will inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-114K, dated April 8, 2019; and

WHEREAS, based upon its review of the record, the

Board finds that the requested special permit, permitting the proposed PCE on portions of the first floor and second floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an R6A (C2-4) zoning district and in the Special Enhanced Commercial District, the operation of a proposed physical culture establishment on portions of the first and second floors of a proposed two- (2) story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 8, 2019”-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 29, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-71-BZ”), shall be obtained within four (4) years, by October 29, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

MINUTES

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – Special Permit (§73-622) for the enlargement of an existing single family-home contrary to floor area, open space and lot coverage (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for adjourned hearing.

Carlo Costanza, Executive Director

2018-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Petros Realty, owner.

SUBJECT – Application May 9, 2018 – Special Permit (§73-621) to permit the legalization of a one-story horizontal enlargement at the rear of an existing three-story and cellar mixed-use commercial and residential building. C1-3/R6B (Special Bay Ridge District).

PREMISES AFFECTED – 7406 Fifth Avenue, Block 5930, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for adjourned hearing.

2018-177-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kasim Allaham, owner.

SUBJECT – Application November 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing two-family to be converted to a single-family home, contrary to floor area (§23-142); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2061 Ocean Parkway, Block 7109, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

2019-7-BZ

APPLICANT – Francis R. Angelino, Esq., for Westchester Country Club Land Association, Inc., owner.

SUBJECT – Application January 14, 2019 – Special Permit (§73-121) to permit a proposed educational training facility (Fordham University Sailing and Rowing Team) contrary to ZR §22-10. R2 zoning district.

PREMISES AFFECTED – 3341 Country Club Road, Block 5409, Lot 470, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M. for continued hearing.

MINUTES

**REGULAR MEETING
THURSDAY AFTERNOON, OCTOBER 29, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

ZONING CALENDAR

2019-161-BZ

CEQR #19-BSA-139K

APPLICANT – Law Office of Jay Goldstein, for RFR/K Prospect Owner LLC, owner; Catmar Dumbo LLC, lessee. SUBJECT – Application May 30, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*F45 Training Dumbo*) on portions of the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 3, 2019, acting on DOB Alteration Type I Application No. 321928599, reads in pertinent part:

“Proposed physical culture establishment in M1-6 zoning district is not permitted pursuant to ZR 42-10 and is referred to the Board of Standards & Appeal[s] for special permit under ZR 73-36;”
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-6 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of an existing ten- (10) story plus cellar commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is bounded by Prospect

Street to the south, Adams Street to the west and Pearl Street to the east, within an M1-6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 205 feet of frontage along Prospect Street, 101 feet of frontage along Adams Street, 100 feet of frontage along Pearl Street, 21,201 square feet of lot area and is occupied by an existing ten- (10) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 2017, when, under BSA Cal. No. 2017-36-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a physical culture establishment (“PCE”) on a portion of the first floor (3,398 square feet of floor area) of the subject site, operated as “Shadowbox Dumbo,” on condition that all work substantially conform to plans filed with the application; the term of the grant be for ten (10) years, expiring January 1, 2027; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum 3’-0” wide exit pathways be provided leading to the required exits and that pathways be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—be maintained in the entire PCE space and the PCE be fully sprinklered, as indicated on the Board-approved plans; sound attenuation be installed in the PCE as indicated on the Board-approved plans; Local Law 58/87 be complied with as approved by DOB; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by July 18, 2018; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, on October 31, 2017, under BSA Cal No. 2017-140-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE on a portion of the cellar level (2,056 square feet of floor space) and first floor (3,407 square feet of floor area) of the subject site, operated as “Yoga Vida,” on condition that all work substantially conform to plans filed with the application; the term of the grant be for ten (10) years, expiring January 31, 2027; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; minimum 3’-0” wide exit pathways be provided leading to the required exits and that pathways be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms

MINUTES

and connection of the interior fire alarm to an FDNY-approved central station—be maintained in the entire PCE space and the PCE be fully sprinklered, as indicated on the Board-approved plans; sound attenuation be installed in the PCE as indicated on the Board-approved plans; Local Law 58/87 be complied with as approved by DOB; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one (1) year, by October 31, 2018; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional

findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 3,821 square feet of floor space on the cellar level with a fitness area, restrooms, showers, storage and office space; and 608 square feet of floor area on the first floor with the PCE entrance; and

WHEREAS, the PCE began operation in April 2019, as “F45 Training Dumbo,” with the following hours of operation: Monday through Friday, 4:30 a.m. to 9:00 p.m.; Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located within a commercial building, with all PCE activities occurring on the cellar level with no tenants below, the PCE space maintains measures to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces; these measures include sound attenuated acoustical and gypsum ceilings and various rubber mats in areas of the PCE space; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because is located within an existing commercial building and does not anticipate the PCE to generate any significant additional

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

traffic; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located entirely within an existing building and most of the patrons walk or use mass transit to access the PCE; and

WHEREAS, the applicant further represents that, while the PCE utilizes a sound system including the use of amplified microphones, the PCE has been operating without incident; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space; and

WHEREAS, by letter dated October 25, 2019, the Fire Department states that these premises are protected by a combined suppression system (standpipe and sprinkler) and fire alarm system which have been tested to the satisfaction of the Fire Department; and, after reviewing revised plans showing the exit passageways from the cellar space to exit stairs leading to Adams Street and Pearl Street, in addition to the main entrance on Prospect Street, the Fire Department has no objection; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-139K, dated May 30, 2019; and

WHEREAS, the term of the special permit has been reduced to reflect the period of time the PCE operated without Board approval; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the

PCE on portions of the first floor and cellar level, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-6 zoning district, the operation of a physical culture establishment on portions of the first floor and cellar level of an existing ten- (10) story plus cellar commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 28, 2019"-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2029;

THAT attenuation measures shall be maintained in the PCE space so as to prevent noise and vibration disturbance to surrounding tenant spaces;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-161-BZ"), shall be obtained within one (1) year, by October 29, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

MINUTES

2019-164-BZ

CEQR #19-BSA-142M

APPLICANT – Law Office of Jay Goldstein, for 9 E 16 by 1771 Holdings LLC, owner; Change Your Life LLC, lessee.
SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Grit Boxing) on portions of the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A Ladies Mile Historic District.

PREMISES AFFECTED – 9 East 16th Street (9-11 East 16th Street), Block 844, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 2, 2019, acting on DOB Alteration Type I Application No. 123757853, reads in pertinent part:

“The proposed “physical culture or health establishment” in a C6-2A zoning district is contrary to ZR 32-10. A special permit from the New York City Board of Standards and Appeals (BSA) is required per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district and in the Ladies’ Mile Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the cellar level and first floor of an existing seven-(7) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation of this application; and

WHEREAS, the Board was also in receipt of two (2) form letters in support of this application and two (2) form letters in opposition to this application, citing concerns relating to neighborhood character and the service of alcohol at the subject site; and

WHEREAS, the subject site is located on the north side of East 16th Street between Fifth Avenue and Union Square West, within a C6-2A zoning district and in the Ladies’ Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along East 16th Street, 92 feet of depth, 4,600 square feet of lot area and is occupied by an existing seven-

(7) story plus cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 1,887 square feet of floor space on a portion of the cellar level with locker rooms, restrooms, showers and storage; and 3,218 square feet of floor area on a portion of the first floor with areas for a fitness studio, exercise equipment, bar, reception and retail space; and

WHEREAS, the PCE began operation in August 2019, as “Grit Boxing,” and is open Monday through Friday, 5:45 a.m. to 12:00 a.m., and, Saturday and Sunday, 6:45 a.m. to 12:00 a.m.; and

WHEREAS, the applicant states that the PCE space maintains measures to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces; these measures include studio partitions isolated, and filled with batt insulation, from adjacent structures with two (2) layers sheetrock in the studio and two (2) layers outside the studio, with sound attenuated batt insulation; studio flooring is a 4” raised isolated concrete floor with isolators with an additional rubber rolled out mat on top; all penetrations at the studio ceiling and partitions are sealed with insulation and caulked; studio doors have acoustic seals; ceilings at studios are protected by two (2) layers of batt insulation, two (2) layers of sheetrock; and STC ratings at acoustical separation are as follows: partitions are STC 60, flooring is STC 64, ceiling is STC 69; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in an area characterized by commercial office buildings, community facilities, retail stores, restaurants, and residential uses, and the PCE will not attract significant additional traffic to the area; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for

physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the area is comprised of a mixed of uses and most of the PCE patrons walk or use mass transit to access the PCE and the PCE does not increase traffic to the surrounding area; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm system, including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building’s interior fire alarm are maintained within the PCE space; and

WHEREAS, by letter dated October 26, 2019, the Fire Department states that these premises are protected by a fire suppression system (sprinkler) that was tested and witnessed by the Fire Department and satisfied their Rules and Regulations; they have no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, by Certificate of No Effect (“CNE”) CNE-19-39668, issued May 17, 2019, the New York City Landmarks Preservation Commission permitted interior alterations at the cellar and first floor, including the demolition and construction of nonbearing partitions and finishes, as well as plumbing work; and

WHEREAS, the applicant submitted a copy of the New York State Liquor Authority license, effective August 5, 2019, and expiring on July 31, 2021, permitting the service of liquor, wine, beer, and cider in the PCE, and with permission for recorded music and no dancing; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-142M, dated June 3, 2019; and

WHEREAS, the term of the special permit has been reduced to reflect the period of time the PCE has operated

MINUTES

without Board approval; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, the operation of a proposed physical culture establishment on a portion of the cellar level and first floor of an existing seven- (7) story plus cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 8, 2019”-Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2029;

THAT attenuation measures shall be maintained so as to prevent noise or vibration disturbance to nearby tenant spaces;

THAT PCE patrons and all PCE activities, including the service and consumption of alcohol, shall remain within the building;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building’s interior fire alarm shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-164-BZ”), shall be obtained within one (1) year, by October 29, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 29, 2019.

2018-91-BZ

APPLICANT – Klein Slowik PLLC, for LW Retail Associates, owner.

SUBJECT – Application May 17, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C6-2A zoning district. PREMISES AFFECTED – 78-80 Leonard Street a/k/a 79 Worth Street, Block 173, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for postponed hearing.

2019-9-BZ

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application January 18, 2019 – Variance (§72-21) to permit the construction of a new single family detached home, contrary to side yard and open area regulations, ZR §23-461(c), and front yard regulations, ZR §23-45. R3A zoning district.

PREMISES AFFECTED – 468 Targee Street, Block 647, Lot 73, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2019-21-BZ

APPLICANT – Sheldon Lobel, P.C., for Yanjun Luo, owner.

SUBJECT – Application January 25, 2019 – Special Permit (§73-622) to permit the enlargement and conversion of an existing single-family home to a two-family residence, contrary to FAR, open space and lot coverage (ZR §23-142); side yards (ZR §§23-461(a) and 23-48) and rear yard (§23-47). R4 zoning district.

PREMISES AFFECTED – 2223 East 14th Street, Block 7373, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

2019-75-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 704 Broadway Realty LLC, owner; Bright Horizons Children’s Centers LLC, lessee.

SUBJECT – Application April 12, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (*Bright*

MINUTES

Horizons Child Care Center) to be located on the first floor, mezzanine and cellar of an existing eight story building contrary to ZR §42-10. M1-5B NoHo Historic District.
PREMISES AFFECTED – 704 Broadway, Block 545, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

2019-163-BZ

APPLICANT – Law Office of Jay Goldstein, for EM Real Estate LLC, owner; Bar Nala NYC LLC, lessee.

SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bar Method) on the second floor of an existing building contrary to ZR 42-10. M1-5B Noho Historic District.

PREMISES AFFECTED – 678 Broadway, Block 530, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 26, 2019, at 10 A.M., for continued hearing.

2019-178-BZ

APPLICANT – Jay Goldstein, Esq., for Yosef and Rivka Goldfeder, owners.

SUBJECT – Application October 29, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (floor area and open space ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1426 East 24th Street, Block 7677, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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November 29, 2019

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NASR SHETA

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| HEARINGS HELD - | 22 Reade Street, Spector Hall, New York, N.Y. 10007 |
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CONTENTS

| | |
|--------------------------------------|---------|
| DOCKET | 850/851 |
| CALENDAR of December 10, 2019 | |
| Morning | 852 |
| Afternoon | 853/854 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, November 19, 2019**

Morning Calendar855

Affecting Calendar Numbers:

| | |
|---------------------------------|--|
| 867-55-BZ | 66-15 Borden Avenue, Queens |
| 727-86-BZ | 240 East 58 th Street, Manhattan |
| 1-09-BZ | 39-01 Queens Boulevard, Manhattan |
| 216-13-BZ | 750 Barclay Avenue, Staten Island |
| 751-60-BZ | 105 New Dorp Lane aka 1395 New Dorp Plaza, Staten Island |
| 85-99-BZ | 1106 Metcalf Avenue, Bronx |
| 2017-216-BZ | 411 Wales Avenue, Bronx |
| 2019-168-A | 140 and 142 Fulton Street, Manhattan |
| 2016-4302-A thru 2016-4326-A | 92 to 120 Cupidity Drive and 201 to 225 Avidita Place, Staten Island |
| 2016-4355-A thru 2016-4462-A | 301-465 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2017-107-A thru 2017-129-A | 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2019-51-A thru 2019-57-A | 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Staten Island |
| 2018-68-A thru 2018-90-A | 90, 84, 78, 72, 66, 60, 54, 48, 42, 36, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, Santina Drive, Staten Island |
| 2018-151-A | 6-05 129 th Street, Queens |
| 2019-61-BZ | 1370 East 24 th Street, Brooklyn |
| 2019-62-BZ | 435 Hudson Street, Manhattan |
| 2019-63-BZ | 120 West 72 nd Street, Manhattan |
| 2016-4469-BZ | 49-23 Astoria Boulevard, Queens |
| 2017-56-BZ | 1321 Richmond Road, Staten Island |
| 2017-261-BZ | 527 East New York Avenue, Brooklyn |
| 2017-270-BZ | 1434 Utica Avenue, Brooklyn |
| 2017-272-BZ | 10-19 46 th Road, Queens |
| 2018-171-BZ | 1 East 70 th Street, Manhattan |
| 2019-39-BZ | 2311 East 4 th Street, Brooklyn |

Afternoon Calendar874

Affecting Calendar Numbers:

| | |
|------------|--|
| 2019-80-BZ | 15 West 18 th Street, Manhattan |
| 2019-22-BZ | 24-47 95 th Street, Queens |
| 2019-26-BZ | 233 Nevins Street, aka 236 Butler Street, Brooklyn |
| 2019-30-BZ | 2705 East 28 th Street, Brooklyn |
| 2019-93-BZ | 3203 Bedford Avenue, Brooklyn |

Corrected Calendar878

Affecting Calendar Numbers:

| | |
|-----------|--|
| 244-97-BZ | 158/62 West 83 rd Street, Manhattan |
|-----------|--|

DOCKETS

New Case Filed Up to November 19, 2019

2019-280-BZ

137 Fifth Avenue, Block 00849, Lot(s) 0002, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (SLT) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies' Mile Historic District. C6-4M district.

2019-281-A

965 Richmond Avenue, Block 1479, Lot(s) 0001, Borough of **Staten Island, Community Board: 1**. Appeal of a New York City Department of Buildings determination. R3-2 district.

2019-282-A

18-50 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-283-A

18-48 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-284-A

18-44 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-285-A

18-42 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-286-A

18-40 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-287-A

18-36 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-288-A

18-34 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-289-A

18-32 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-290-A

18-28 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

2019-291-A

18-26 Bay Lane, Block 5872, Lot(s) 102, Borough of **Queens, Community Board: 7**. Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district. R5 district.

DOCKETS

2019-292-BZ

41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C1-2/R7-1 zoning district C1-2/R7-1 district.

2019-293-BZ

44--02 23rd Street, Block 00439, Lot(s) 0039, Borough of **Queens, Community Board: 2**. Special Permit (§73-19) to permit the legalization of an existing school (UG 3) (Queens Paideia School (QPS)) contrary to ZR §42-10. M1-4 zoning district. M1-4 district.

2019-294-BZ

241-243 Throop Avenue, Block 1756, Lot(s) 0006, Borough of **Brooklyn, Community Board: 3**. Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district. R7D and C2-4 district.

2019-295-BZY

428-432 East 58th Street, Block 1369, Lot(s) 0034, Borough of **Manhattan, Community Board: 6**. Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years. R10 zoning district. R10 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

**REGULAR MEETING
DECEMBER 10, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 10, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

764-56-BZ

APPLICANT – Alfonso Duarte, for Barney’s Service Station Inc., owner.

SUBJECT – Application July 2, 2019 – Amendment (§11-412) of a previously approved variance permitting the operation of an automotive service station (UG 16B). The amendment seeks to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office and storage space. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, Block 7451, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barone Properties II, Inc., owner.

SUBJECT – Application February 25, 2019 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (Genesis Auto Town) which expired on January 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern and Goldie Stern, Owner.

SUBJECT – Application September 23, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home which expired on August 25, 2019. R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-207-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Ormonde Equities, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application September 18, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (CorePower Yoga) on the second floor of an existing building which expired August 21, 2019. C4-6A/R8B Upper West Side/Central Park West Historic District.

PREMISES AFFECTED – 2030 Broadway, Block 1141, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

2018-198-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Debbie Ann Culotta, owner.

SUBJECT – Application December 12, 2018 – Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 85 Trenton Court, Block 6708, Lot 13 (tent.), Borough of Staten Island.

COMMUNITY BOARD #3SI

2019-270-BZY

APPLICANT – Deidre A. Carson, Esq., for 1248 Associates LLC (c/o Hidrock Properties), owner.

SUBJECT – Application September 24, 2019 – to extend the time of construction for a period of one year for a 29-story hotel ZR §81-621. C5-2.5 Special Midtown District.

PREMISES AFFECTED – 12-14 East 48th Street, Block 1283, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

REGULAR MEETING DECEMBER 10, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 10, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4149-BZ

APPLICANT – World Design Architecture, PLLC, c/o William A. Alicea, R.A., for Van Nest Development, LLC c/o Jonathan Sacks, owners.

SUBJECT – Application March 21, 2016 – Variance (§72-21) to permit the construction of an eight-story, mixed-use residential and commercial building contrary to bulk and use regulations. R5 zoning district.

PREMISES AFFECTED – 500-508 Van Nest Avenue, Block 4018, Lot(s) 1 & 2, Borough of Bronx.

COMMUNITY BOARD #11BX

2016-4264-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Ronald Morgan, owner.

SUBJECT – Application October 4, 2016 – Variance (§72-21) to permit a residential development consisting of a four story, ten unit multiple dwelling, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 194 Moffat Street, Block 3447, Lot(s) 16 & 17 (Tentative 16), Borough of Brooklyn.

COMMUNITY BOARD #3BK

2018-192-BZ

APPLICANT – Sheldon Lobel, P.C., for 229 Lenox Avenue Holding LLC, owner.

SUBJECT – Application November 29, 2018 – Variance (§72-21) to permit the legalization of a conversion of an existing mixed-use building to a single-family home in which the glazed windows and doors facing the rear lot line do not comply with the minimum distance for legally required windows for natural light and ventilation contrary to ZR 23-861. C1-4/R7-2 zoning district.

PREMISES AFFECTED – 229 Lenox Avenue, Block 1906, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #10M

2019-48-BZ

APPLICANT – Sheldon Lobel, P.C., for Michael Wong, owner.

SUBJECT – Application March 15, 2019 – Variance (§72-21) to permit the construction of a three-story and cellar, two-family building contrary to ZR §23-49 (Special Provisions for Side Lot Line Walls). R5 zoning district.

PREMISES AFFECTED – 31-45 41st Street, Block 679, Lot 23, Borough of Queens.

COMMUNITY BOARD #1Q

2019-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Blimie Stern and William Stern, owners.

SUBJECT – Application March 27, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to FAR and open space (ZR §23-141); side yards (ZR §§23-461) and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1334 East 24th Street, Block 7659, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2019-156-BZ

APPLICANT – BHB Investment Holdings Glen Oaks, LLC d/b/a Goldfish Swim School, for 255 Mall LLC, owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Goldfish Swim School*) to be located within an existing retail space located within an existing shopping center contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 257-09 Union Turnpike, Block 8513, Lot 2, Borough of Queens.

COMMUNITY BOARD #13Q

2019-193-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary (D/B/A/ New York Eye and Ear Infirmary of Mount Sinai), owners.

SUBJECT – Application July 17, 2019 – Variance (§72-21) to permit the construction of a new 7-story plus screened rooftop hospital building (Mount Sinai Beth Israel) contrary to underlying bulk requirements. C1-6A and C1-7A Special Transit Land Use District.

PREMISES AFFECTED – 218-222 Second Avenue (aka 311-315 East 13th Street), 310 East 14th Street (a/k/a 302 East 14th Street, a/k/a 302-318 East 14th Street/224-26 Second Avenue, 300 East 14th Street, 326 East 14th Street & 313 East 13th Street (a/k/a 313-327 East 13th Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

2-10-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary (D/B/A/ New York Eye and Ear Infirmary of Mount Sinai), owners.

SUBJECT – Application July 17, 2019 – Amendment of a previously approved Special Permit (§73-641) which permitted the enlargement of a community facility (New York Eye and Ear Infirmary). C1-6A and C1-7A Special Transit Land Use District.

PREMISES AFFECTED – 218-222 Second Avenue (aka 311-315 East 13th Street), 310 East 14th Street (a/k/a 302 East 14th Street, a/k/a 302-318 East 14th Street/224-26 Second Avenue, 300 East 14th Street, 326 East 14th Street & 313 East 13th Street (a/k/a 313-327 East 13th Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

COMMUNITY BOARD #3M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 19, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 17, 2018, acting on Alteration Type I Application No. 421252717, reads in pertinent part:

“Propose to extend the term of variance for a period of 10 years past June 19, 2011, enlarge existing building in an R4-1 zoning district, which is all contrary to the resolutions and plans adopted by the Board of Standards and Appeals under Cal. #867-55-BZ and must be referred back to the BSA for approval;” and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board, that expired on June 19, 2011, an extension of time to obtain a certificate of occupancy, which expired on February 10, 2005, and an amendment to permit the conversion of service bays to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, with continued hearings on February 26, 2019, March 26, 2019 and November 19,

2016, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Borden Avenue and Clinton Avenue, in an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 236 feet of frontage along Borden Avenue, 167 feet of frontage along Clinton Avenue, 12,627 square feet of lot area and is occupied by an existing automotive services station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1956, when, under the subject calendar number, the Board granted a variance to permit the subject site to be occupied as a gasoline service station and accessory uses for a term of 15 years, expiring June 19, 1971, on condition that all building uses on the premises be removed and the site graded and constructed substantially as shown on such revised plans; the accessory building have no cellar and be located on the northerly side, designed and arranged as proposed on revised plans; its exterior be of Carrara glass except that the rear elevation may be of white brick, as shown; the interior arrangement be substantially as shown on such plans; there be erected on the easterly and northerly lot lines, retaining walls as may be necessary to support the adjoining property; on such retaining wall or along all lot lines except along the service road there be erected a woven wire fence of the chain link type on a concrete base to a total height of not less than five feet six inches; such fence return along all building lines to the service road of the Midtown Expressway; suitable terminating posts of masonry be erected at the termination of such fences; that curb cuts be restricted to four to the service road, where shown, each 30 feet in width, with no portion of any curb cut nearer than five feet to a lot line as prolonged; the number of gasoline storage tanks not exceed ten 550-gallon approved tanks; pumps be out of a low approved type, erected not nearer than 15 feet to the street building line of the expressway service road; planting be maintained at the rear of the accessory building and along the street lines of Clinton Avenue and the side lot lines to the east, as shown, properly protected with a concrete curbing not less than eight inches high and six inches wide and planting be of suitable plant material; the balance of the premises where not occupied by accessory building, pumps and planting be paved with concrete or asphalt and properly rolled and drained to provide surface drainage; the sidewalk and curbing abutting the site be reconstructed or restored to the satisfaction of the Borough President; such portable fire-fighting appliances shall be maintained as the Fire Commissioner directs; signs be restricted to permanent signs attached to the façade of the accessory building, facing the service road, and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting

MINUTES

the erection within the building line of the service road toward the east of one post standard, located where shown, to support a sign which may be illuminated, advertising only the brand of gasoline on sale, and permitting such sign to extend beyond the building line for a distance of not over four feet; and, all permits required be obtained, including a certificate of occupancy and all work completed within one year, by June 19, 1956; and

WHEREAS, on June 18, 1957, under the subject calendar number, the Board amended the resolution to extend the time within which to obtain permits and complete the work on condition that all permits required, including a new certificate of occupancy be obtained and all work completed within one year, by June 18, 1958; and

WHEREAS, on October 5, 1971, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on June 19, 1981, on condition that the planted area on the premises and the grass strips on the sidewalks be maintained in accordance with the terms and conditions of the resolution and the residential character of the neighborhood; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on November 4, 1981, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on June 19, 1991, on condition that the station be operated at all times in such a fashion so as to minimize traffic congestion; the grounds, planting and fences be maintained in good condition; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 4, 1982; and

WHEREAS, on March 10, 1992, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten years, to expire on June 19, 2001, on condition that the premises conform to the revised drawings of existing conditions; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by March 10, 1993; and

WHEREAS, on February 10, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend of the term for ten years, to expire on June 19, 2011, and to permit the erection of a new metal canopy over the fuel dispensing area, the relocation of the ground sign structure to the westerly end of the lot, and to provide a new full width concrete sidewalk on the Clinton Avenue frontage, a new five-foot high, 100% closed chain-link fencing, and a new planting area, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; there be no overnight parking of vehicles of the site, with the exception of cars awaiting service; no automatic car washing occur on the premises, and all car wash modules be removed; there be no use of

automatic vacuums on the site; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; landscaping be provided and maintained in accordance with BSA-approved plans; lighting be positioned down and away from any adjacent residential uses; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by February 10, 2005; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration (s) not related to the relief granted; and

WHEREAS, the term having expired June 19, 2011, and the time to obtain a certificate of occupancy having expired February 10, 2005, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than two years after the expiration of term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(3)(ii) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten years each; and

WHEREAS, the applicant also seeks an amendment of the resolution to legalize the installation of two vacuum stations along the Clinton Avenue portion of the site and to enlarge and convert the existing accessory building into a convenience store, in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99; and

WHEREAS, ZR § 11-412 permits the user of any building or structure to be extended or enlarged limited to 50 percent of the floor area of such building occupied by the use on December 15, 1961; and

WHEREAS, the applicant represents that the proposed enlargement of the accessory building, from 1,239 square feet of floor area to approximately 1,509 square feet of floor area, is an enlargement of less than 50 percent of the floor area occupied by the use on December 15, 1961; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed

MINUTES

sales area of the accessory convenience store will be 1,509 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,157 square feet); and

WHEREAS, the applicant also states that a ten-ton split system condenser unit will be added to the accessory building, surrounded with a sound attenuating barrier, to accommodate the accessory convenience store, and proposes to operate the site 24 hours per day, seven days per week; and

WHEREAS, over the course of hearings, the Board raised concern with regard to the poor condition of the site and requested improvements be made to the landscaping and maintenance of the site; and

WHEREAS, in response, the applicant provided photographs demonstrating the completion of site improvements, including maintenance of the fences and walls at the site, added detail to the plans with respect to the dimensions of planting beds and protective curbing, and a site improvement plan, committing to increase the landscaping at the site and apply asphalt sealant to the lot; and

WHEREAS, by letter dated December 27, 2018, the Fire Department states that a review of their records indicates that the automotive service station is current (expires November 2021) with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and fire suppression (dry-chemical) system, and they have no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amend* the resolution, dated February 10, 2004, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten years, expiring November 19, 2029, extension of time to obtain a certificate of occupancy, and amendment, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 31 , 2019”- (8) sheets; and *on further condition*:

THAT all planting shown on drawings shall be installed by the end of the Fall, 2020 planting season;

THAT the asphalt shall be resurfaced;

THAT any graffiti or irregular painting shall be painted properly or removed, if brick;

THAT no oil drums or hazardous material shall be stored outside of an enclosed space;

THAT all trash shall be contained within trash enclosure;

THAT there shall be no overnight parking of vehicles of the site, with the exception of cars awaiting service;

THAT that no automatic car washing shall occur on the

premises, and all car wash modules shall be removed:

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT landscaping shall be provided and maintained in accordance with BSA-approved plans;

THAT lighting shall be positioned down and away from any adjacent residential uses;

THAT there shall be no overnight parking of vehicles of the site, with the exception of cars awaiting service;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 867-55-BZ”), shall be obtained within four years, by November 19, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 19, 2019.

727-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shuqeri Selimaj Family 2018 Trust, owner; Club A Steakhouse, lessee.

SUBJECT – Application February 14, 2019 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three-story building in an R8B zoning district which expired on January 17, 2019. R8B zoning district.

PREMISES AFFECTED – 240 East 58th Street, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

MINUTES

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board pursuant to ZR § 72-21, which permitted the use of the site as an eating and drinking establishment, and expired on January 17, 2019; and

WHEREAS, a public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application on condition that the term be limited to five years; and

WHEREAS, the subject site is located on the south side of East 58th Street, between Third Avenue and Second Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 20 feet of frontage along East 58th Street, 100 feet of depth, 2,008 square feet of lot area and is occupied by an existing three-story with basement and cellar mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 27, 1969, when, under BSA Cal. No. 84-69-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of the basement and first floor that encroaches on the required rear yard and the use of the first floor and basement for commercial occupancy, on condition that all work substantially conform to drawings filed with the application; the variance be for a term of ten years, to expire on May 27, 1979; all laws, rules and regulations be complied with; and, substantial construction be completed within one year, by May 27, 1970; and

WHEREAS, on June 29, 1970, under BSA Cal. No. 84-69-BZ, the Board amended the resolution to extend the time to complete the work, to expire May 27, 1971; and

WHEREAS, on January 17, 1989, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit an eating and drinking establishment in the cellar, basement and first floor of an existing mixed-use commercial and residential three-story with basement and cellar building on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the variance be limited to a term of ten years, to expire January 17, 1999; the hours of operation be limited to 10:00 a.m. to 1:00 a.m.; in accordance with Conditional Negative Declaration, for the residential portion of the building, the applicant provide a minimum of 25 dBA window-wall attenuation so that with the windows closed, the internal noise level does not exceed 45 dBA—an alternate means of ventilation include but not be limited to: provision of central conditioning; provision of air conditioning sleeves containing air conditioners of HUD-approved fans—the means of ventilation conform to Section 27-752 *et. seq.* of the Building Code of the City of New York (Standards of Mechanical Ventilation); the conditions

appear on the certificate of occupancy; in accordance with the Conditional Negative Declaration, before construction begins, the applicant submit two copies of the plumbing plans to the New York City Department of Environmental Protection’s (“DEP”) Bureau of Waste Water Treatment, Industrial Waste Control section for approval—the plans include the make/model and sizing/flow calculation of the interceptors to be installed; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution and the jurisdiction of the Department; and, substantial construction be completed within four years, by January 17, 1993; and

WHEREAS, on August 7, 2001, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance for ten years, to expire January 17, 2009, on condition that, in accordance with BSA-approved plans, sprinklers be extended on the cellar and basement levels from 240 East 58th Street to 242 East 58th Street; the conditions appear on the certificate of occupancy; the premises be maintained in substantial compliance with the proposed conditions plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained within 18 months, by February 7, 2003; and

WHEREAS, on May 19, 2009, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on January 17, 2019, on condition that any and all work substantially conform to drawings filed with the application; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by November 19, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired on January 19, 2019, the applicant now seeks an extension; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of term of a variance; and

WHEREAS, at the hearing, the Board raised concerns regarding the operation of the sprinkler system at the subject premises and its prior conditioned connection to the system at the adjacent building, 242 East 58th Street; and

WHEREAS, by letter dated November 18, 2019, the Fire Department states that although the sprinkler system for the premises has a connection to the sprinkler system located at 242 East 58th Street and operates as one system, the sprinklers are being monitored by a sprinkler fire alarm

MINUTES

system which was inspected and approved by the Fire Department; based on the foregoing, the Department has no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby amend the resolution, dated January 17, 1989, as amended through May 19, 2009, so that as amended this portion of the resolution shall read: “to permit an extension of term of ten years, expiring January 17, 2029; on condition:

THAT the hours of operation shall be limited to 10:00 a.m. to 1:00 a.m.;

THAT in accordance with Conditional Negative Declaration, for the residential portion of the building, the applicant provide a minimum of 25 dBA window-wall attenuation so that with the windows closed, the internal noise level does not exceed 45 dBA—an alternate means of ventilation includes but is not limited to: provision of central conditioning; provision of air conditioning sleeves containing air conditioners of HUD-approved fans—the means of ventilation must conform to Section 27-752 *et. seq.* of the Building Code of the City of New York (Standards of Mechanical Ventilation);

THAT the term of the variance shall expire on January 17, 2029;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 727-86-BZ”), shall be obtained within one year, by November 19, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 19, 2019.

1-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 39-01 QB LLC, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application July 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) which expired December 1, 2018; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. M1-4 zoning district.

PREMISES AFFECTED – 39-01 Queens Boulevard, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on December 1, 2018, an extension of time to obtain a certificate of occupancy, which expired on May 19, 2010, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Queens Boulevard and 39th Street, in an M1-4 zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along Queens Boulevard, 375 feet of frontage along 39th Street, 37,500 square feet of lot area and is occupied by a three-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to § 73-36, to legalize the operation of a physical culture establishment (“PCE”), operated as New York Sports Club, on a portion of the ground floor (13,640 square feet of floor area) for a term expiring December 1, 2018, on condition that all work substantially conform to drawings filed with the application; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed

MINUTES

massage therapists; all signage comply with M1 zoning regulations; the above conditions appear on the certificate of occupancy; accessibility be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the special permit and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than 30 days after the expiration of term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(2) and 1-07.3(d), of the Board's Rules to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) requires a demonstration by the applicant that the use has been continuous from the expiration of the term through the filing of the application, and that, absent a waiver of the Board's Rules, substantial prejudice would result; and

WHEREAS, the applicant submitted copies of insurance payments and utility bills for the PCE to continuously cover the period of December 2018 through March 2019, and states that, absent the waiver of the Board's Rules, the PCE would face substantial prejudice and extreme hardship; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, New York Sports Club, as previously approved by the Board, but notes the PCE closes one hour later on the weekends and now has the following hours of operation: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 7:00 p.m.; and

WHEREAS, by letter dated November 19, 2019, the Fire Department states that these premises are protected by a sprinkler system and a fire alarm that have been tested and inspected by the Bureau of Fire Prevention units and found to be operation; the Bureau's Licensed Public Place of Assembly (LPPA) Unit has inspected the premises and issued a violation order (No. E528099) for failure to obtain an operating permit from the Department of Buildings; and the Fire Alarm Inspection (FAIU) Unit has inspected the premises and issued a violation order (No. E373419) for failure to submit as-built riser diagrams; based on the foregoing, the department has no objection to the application

and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedure *amends* the resolution, dated May 19, 2009, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten years, expiring December 1, 2028, and to permit a change in the hours of operation; *on condition*:

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT all signage shall comply with M1 zoning regulations;

THAT fire safety measures be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 1-09-BZ"), shall be obtained within one year, by November 19, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 19, 2019.

MINUTES

216-13-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application July 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (Boardwalk Avenue), contrary to General City law Section 35. Companion Appeal application was granted pursuant to BSA Calendar Number 217-13-A which expired on June 24, 2018; Waiver of the Board’s Rules. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6354/6397, Lot(s) 40, 7, 9, 12, 19 (Ten 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and extension of time to complete construction pursuant to a variance, granted pursuant to ZR §72-21, which permitted the construction of a one-story building occupied by a restaurant (Use Group (“UG”) 6), and expired on June 24, 2018; and

WHEREAS, a public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with continued a hearing on November 19, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located west of the intersection of Barclay Avenue and Bayview Terrace, in an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Barclay Avenue, 50 feet of depth, and is under construction of a proposed one-story eating and drinking establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 9, 1979, when, under BSA Cal. No. 72-78-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit an existing two-story building, an extension of the first-floor restaurant and cabaret in an R3-2 zoning district, increasing the degree of non-conformance on condition all work substantially conform to the drawings filed with the application; all laws rules and regulations applicable be complied with; and substantial construction to

be completed in one year, by January 9, 1980; and

WHEREAS, on June 24, 2014, under the subject calendar number, the Board granted a new variance pursuant to ZR § 72-21, to permit the construction of a one-story eating and drinking establishment, with accessory parking, on condition that the bulk parameters of the enlarged building be: a total floor area of 4,890 square feet (0.28 FAR); a total height of 31’- 4”, and a minimum of 24 unattended parking spaces or 41 attended spaces, as illustrated on the Board approved plans; the hours of operation, for both indoor and outdoor operation, be limited to Monday to Thursday, 12:00 p.m. to 10:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday 10:00 a.m. to 10:00 p.m.; there not be any music or amplified sound associated with the outdoor operation of the restaurant; parking be required on Fridays and Saturdays; signage on site comply with C1 district regulations, as reflected on the BSA-approved plans; all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time to complete construction having expired on June 24, 2018, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than one year after the expiration of time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the Board’s Rules), of § 1-07.3(c)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, the applicant anticipates construction being completed by March 2021; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedure and *amend* the resolution, dated June 24, 2014, so that as amended this portion of the resolution shall read: “to *permit* extension of time to complete construction of four years, expiring June 24, 2022; *on condition*:

THAT the bulk parameters of the enlarged building shall be as follows: a total floor area of 4,890 square feet (0.28 FAR); a total height of 31’- 4”, and a minimum of 24 unattended parking spaces or 41 attended spaces, as illustrated on the Board-approved plans;

THAT the hours of operation, for both indoor and outdoor operation, shall be limited to Monday to Thursday,

MINUTES

12:00 p.m. to 10:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday 10:00 a.m. to 10:00 p.m.;

THAT there shall not be any music or amplified sound associated with the outdoor operation of the restaurant; parking is required on Fridays and Saturdays;

THAT signage on site shall comply with C1 district regulations, as reflected on the BSA-approved plans;

THAT all fencing and landscaping shall be installed and maintained as reflected on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 216-13-BZ”), shall be obtained within four years, by June 24, 2022;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 19, 2019.

751-60-BZ

APPLICANT – Law Office of Lyra J. Altman, for 105 New Dorp Equities Inc., by Chaim Ben Simon, owners.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously granted Variance (§11-411) which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 23, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2009; Waiver of the Board’s Rules. C2-1/R31 and R3X zoning district.

PREMISES AFFECTED – 105 New Dorp Lane aka 1395 New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

85-99-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Silvestre Petroleum Corp., owner; Mobil Oil Corporation, lessee.

SUBJECT – Application March 12, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting, the operation of an automotive service station (Use Group 16B) with an accessory convenience store which is set to expire on June 27, 2020; Waiver of the

Board’s Rules to permit the early filing. R6 zoning district. PREMISES AFFECTED – 1106 Metcalf Avenue, Block 3747, Lot 88, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2017-216-BZ

APPLICANT – Sheldon Lobel, P.C., for 411 Wales Realty, LLC, owner; Civic Builders, Inc., lessee.

SUBJECT – Application May 10, 2019 – Amendment of a previously approved Special Permit (§73-19) to permit a school (UG 3) (Rosalyn Yalow Charter School) within an existing two-story manufacturing building, contrary to ZR §42-12. The amendment seeks to modify a condition permitting middle school or high school to occupy a second-floor incubation space. It proposed to provide a temporary space for an elementary school to incubate the second floor for two years. M1-2 zoning district.

PREMISES AFFECTED – 411 Wales Avenue, Block 2574, Lot 82, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2019-168-A

APPLICANT – Greenberg Traurig, LLP, for 140 Fulton Associates LLC, owner.

SUBJECT – Application June 7, 2019 – to permit the development of a mixed-use building with retail and hotel use on requesting a waiver pursuant to General City Law §35 to allow the building to be constructed in the bed of a mapped street and a waiver of bulk regulation pursuant to ZR §72-01(g). C5-5 Special Lower Manhattan District.

PREMISES AFFECTED – 140 and 142 Fulton Street, Block 79, Lot(s) 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 21, 2019, acting on New Building Application No. 123732292, reads in pertinent part:

1. Proposed development does not comply with bulk regulations resulting from the location of the street, as per ZR 91-32 (Setback

MINUTES

Regulations for the Special Lower Manhattan District); for “Type 3” street walls (as defined on Map 2 in Appendix A), the required setbacks shall be measured from a line drawn at, or parallel to, the street line so that at 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. 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, this is an application under General City Law (“GCL”) § 35 and ZR § 72-01(g) to permit construction within the bed of Fulton Street, a mapped street, that does not comply with bulk regulations affected by the unimproved street, contrary to ZR § 91-32; and

WHEREAS, a public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, and then to decision on November 19, 2019; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the Manhattan Borough President also recommends approval of this application on condition that Lots 26 and 27 be merged; and

WHEREAS, the subject site is located on the south side of Fulton Street, between Broadway and Nassau Street, in a C5-5 zoning district, within the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 80 feet of frontage along Fulton Street, 108 feet of depth, 8,621 square feet of lot area, is occupied by a three-story building (Lot 25) and a six-story building to be demolished (Lot 26), and is vacant (Lot 27); and

WHEREAS, the applicant proposes to develop a 41-story building with approximately 119,695 square feet off floor area and a setback of 10 feet above a height of 60 feet that will be located in the bed of Fulton Street, a street shown on the City Map; and

WHEREAS, GCL § 35 allows the Board to authorize construction within the bed of a mapped street subject to reasonable requirements; and

WHEREAS, since 1961, as shown on the City Map, Fulton Street has been mapped to a width of 90 feet but is only built to a width of approximately 48–55 feet; and

WHEREAS, the widening of Fulton Street is not included in the Department of Transportation’s capital-improvement program, and all of the properties—except the subject site—are improved within the Fulton Street widening area; and

WHEREAS, notably, the Metropolitan Transit Authority’s Fulton Center transit hub was recently built within the within the Fulton Street widening area; and

WHEREAS, by letter dated November 18, 2019, the Department of Environmental Protection states that it has no objection to this application; and

WHEREAS, neither the Fire Department nor the Department of Transportation expressed any objection to this application; and

WHEREAS, ZR § 72-01(g) authorizes the Board:

[T]o waive *bulk* regulations affected by unimproved *streets* where a *development, enlargement* or alteration consists in part of construction within such *streets* and where such *development, enlargement* or alteration would be *non-complying* absent such waiver, provided the Board has granted a permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the *development* or *enlargement* to be located within the unimproved *streets* to be compliant and conforming to the provisions of this Resolution. Such bulk waivers shall only be as necessary to address *non-compliance* resulting from the location of the *development* or *enlargement* within and outside the unimproved *streets*, and the *zoning lot* shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved *streets* were not mapped. Where such *zoning lots* with *private roads* access fewer than 20 *dwelling units*, such *bulk* waivers may be granted by the Board only where the *zoning lots* are fully compliant with the regulations for *private roads* set forth in Article II, Chapter 6. However, for *zoning lots* with *private roads* that access at least 20 *dwelling units*, or for *zoning lots* with *private roads* that access fewer than 20 *dwelling units* for which a modification or waiver of the requirements for *private roads*, pursuant to Section 26-26, is necessary, such *bulk* waivers shall be permitted only by authorization of the City Planning Commission, pursuant to Section 26-27 (Waiver of Bulk Regulations Within Unimproved Streets); and

WHEREAS, the applicant notes that, apart from ZR § 91-32 with respect to the Fulton Street widening line, the proposed development complies with all applicable zoning regulations; and

WHEREAS, the Board notes that the bulk waiver proposed is necessary to address non-compliance resulting from the location of the development within and outside the unimproved portion of Fulton Street, and the subject zoning lot shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved street were not mapped; and

WHEREAS, in response to questions from the Board

MINUTES

at hearing, the applicant submitted a draft form for the merger of Lots 26 and 27; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated May 21, 2019, acting on New Building Application No. 123732292, under the powers vested in the Board by Section 35 of the General City Law, to *permit* construction within the bed of Fulton Street, a mapped street, that does not comply with bulk regulations affected by the unimproved street, contrary to ZR § 91-32; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 15, 2019" 1 sheet; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-168-A"), shall be obtained within four (4) years, by November 19, 2023;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 19, 2019.

2016-4302-A thru 2016-4326-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of twenty-five (25) single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 92 to 120 Cupidity Drive and 201 to 225 Avidita Place, Block 3019, Lot(s) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and Lot(s) 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2016-4355-A thru 2016-4462-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications November 10, 2016 – Proposed constructions of 107 single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-465 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2017-107-A thru 2017-129-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LCC, owners.

SUBJECT – Applications April 13, 2017 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2019-51-A thru 2019-57-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Application March 19, 2019 – Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 301-477 Fourberie Lane, 201-275 Avidita Place, 76-120 Cupidity Drive, Block 3019, Lot(s) 119, 118, 117, 116, 115, 114, 113, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

MINUTES

2018-68-A thru 2018-90-A

APPLICANT – Sanna & Loccisano Architects, P.C., for Rubicon SGA, LLC, owner.

SUBJECT – Application May 14, 2018 – Proposed construction of 23 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district.

PREMISES AFFECTED – 90, 84, 78, 72, 66,60, 54,48, 42, 36, 37, 43,49,55, 61, 67,73, 79, 85, 91, 97, 103, 96 Santina Drive, Block 6517, Tentative Lots, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Laid over to May 9, 2020, at 10 A.M., for continued hearing.

2018-151-A

APPLICANT – Eric Palatnik, P.C., for College Realty Corp., owner.

SUBJECT – Application September 18, 2018 – Application to permit the development of a three story, 24-unit residential building on a lot that is located partially in the bed of a mapped but unbuilt portion of a street contrary to General City Law §35. R3-2 and R3-1 zoning districts.

PREMISES AFFECTED – 6-05 129th Street, Block 3959, Lot 13, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

ZONING CALENDAR

2019-61-BZ

CEQR #19-BSA-107K

APPLICANT – Jay Goldstein, Esq., for Morris Spitzer, owner.

SUBJECT – Application March 22, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR 23-141 (FAR & open space ratio); ZR 23-461(a) (side yard) and 23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1370 East 24th Street, Block 7659, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 28, 2019, acting on

Department of Buildings Application No. 321383221, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
2. Proposed plans are contrary to ZR 23-141 in that the open space ratio (OSR) is less than the required 150%;
3. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yards are less than required;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0””; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on August 13, 2019 after due notice by publication in *The City Record*, with a continued hearing on November 19, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of four (4) form letters in support of this application and one (1) form letter in opposition to this application, citing concerns that the proposed enlargement will not be consistent with the character of the neighborhood; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 24th Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing three- (3) story plus cellar single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two-family detached* or *semi-detached residence* within the following areas:

- a. Community Districts 11 and 15, in the Borough of Brooklyn; and
- b. R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- c. within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards

MINUTES

and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

1. any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
2. any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
3. any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the

foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a three- (3) story plus cellar single-family detached residence with 0.60 FAR (2,400 square feet of floor area), 123% OSR (2,952 square feet of open space), two (2) side yards with widths of 3'-9" and 13'-11", and a rear yard with a depth of 34'-7"; and

WHEREAS, the applicant proposes to horizontally enlarge the single-family detached residence resulting in a three- (3) story plus cellar single-family detached residence with 0.83 FAR (3,318 square feet of floor area), 72% OSR (2,375 square feet of open space), two (2) side yards with widths of 3'-9" and 9'-3", and a rear yard with a depth of 20 feet at the first floor and 25 feet above; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 150% OSR (3,000 square feet of open space assuming a complying 0.5 FAR) is required, two (2) side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,048 square feet to 1,582 square feet, the second floor from 911 square feet to 1,401 square feet, and maintain the third floor with 442 square feet of floor area; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two- (2) family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 96 qualifying residences, 68 residences (71 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.06 and 18 residences have an FAR of 0.83 or greater; and

WHEREAS, the applicant submitted an open space ratio study, demonstrating that 84 lots (88 percent) within the Study Area have an open space ratio less than 150%, ranging from 148% to 52%, and 21 lots have an open space ratio of 72% or less; and

WHEREAS, the applicant submitted a rear yard study demonstrating that, on the subject block, 18 interior lots (55 percent) have rear yards with depths less than 30 feet, ranging from 20 feet to 29 feet, and six (6) lots have rear yards with a depth of 20 feet; and

WHEREAS, the proposed enlargement includes an extension of the existing non-complying 3'-9" northern

MINUTES

side yard, and, pursuant to a 1930 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA107K, dated March 17, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73622 and 7303 to *permit* the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 31, 2019”-Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.83 FAR (3,318 square feet of floor area), a minimum of 72% OSR (2,375 square feet of open space), two (2) side yards with minimum widths of 3’-9” and 9’-3”, and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet above, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-61-BZ”), shall be obtained within four (4) years, by November 19, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 19, 2019.

2019-62-BZ

CEQR #19-BSA-108M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Remainderman 435 Hudson LLC, owner; S10 Training, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*S10*) to be located within the cellar of an existing commercial building with a small lobby entrance on the first floor contrary to ZR §42-10. M1-5(MX-6) zoning district.

PREMISES AFFECTED – 435 Hudson Street, Block 602, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 21, 2019, acting on DOB Alteration Type I Application No. 123418266, reads in pertinent part:

“Proposed ‘physical culture establishment’ in M1-5 & MX-6 zoning districts is contrary to ZR 32-10 and requires [a] special permit from The New York City Board of Standards and Appeals (BSA) per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-5 zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing nine story with cellar and mezzanine commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this

MINUTES

application on October 22, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Hudson Street, between Leroy Street and Morton Street, within an M1-5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 120 feet of frontage along Leroy Street and, 125 feet of frontage along Morton Street, 24,500 square feet of lot area and is occupied by an existing nine story with cellar and mezzanine commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special

permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 6,898 square feet of floor space on a portion of the cellar level with spa rooms, an exercise area, restrooms, changing rooms, lockers and showers; and 350 square feet of floor area on the first floor with the PCE entrance; and

WHEREAS, the PCE is proposed to operate as "S10 Training" and proposes to operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, while the PCE activities will occur within the cellar of a commercial building, separated from the first floor with eight-inch concrete ceilings, sound attenuation measures will be installed and maintained within the PCE space to minimize sound and vibration disturbances caused by the operation of the PCE, including rubber flooring in the PCE activity areas and isolation-mounted speakers; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located in an area that has been used for commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will

MINUTES

contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics, as well as facilities for the practice of massage by New York State-licensed masseurs or masseuses; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will represent an asset to the surrounding area; and

WHEREAS, the applicant states that a sprinkler system is installed and maintained within the PCE space and an approved fire alarm system—including a connection of the interior fire alarm system to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated October 21, 2019, the Fire Department states that these premises are protected by a wet standpipe and sprinkler system, for which a hydrostatic pressure test was performed and tested satisfactory according to the Fire Department rules and regulations; a Public Assembly application must be filed with the Department of Buildings borough office prior to occupancy of the space; based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-108M, dated March 25, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, to permit the PCE on portions of the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-5 zoning district, the operation of a physical culture

establishment on portions of the cellar level and first floor of an existing nine story with cellar and mezzanine commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 1, 2019”- (5) sheets; and *on further condition:*

THAT the term of the PCE grant will expire on November 19, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including manual pull stations at each required exit, area smoke detectors, local audible and visual alarms and connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum three foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-62-BZ”), shall be obtained within four years, by November 19, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 19, 2019.

2019-63-BZ CEQR #19-BSA-109M

APPLICANT – Sheldon Lobel, P.C., for 120 West 72nd Street Holdings LLC, owner; EPOC UWS LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Orangetheory Fitness) located on a portion of the first-floor of an existing mixed- use commercial and residential building contrary to ZR §32-10. C4-6A zoning

MINUTES

district (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 120 West 72nd Street, Block 1143, Lot 7505, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 9, 2019, acting on DOB Alteration Type I Application No. 123655400, reads in pertinent part:

“ZR 32-10, ZR 73-36: Proposed “physical culture establishment” in a C4-6A zoning district is contrary to ZR 32-10 and requires a special permit from the New York City Board of Standards and Appeals (BSA) per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 16- story with cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the Board was also in receipt of three form letters in support of this application; and

WHEREAS, the subject site is located on the south side of West 72nd Street, between Amsterdam Avenue and Columbus Avenue, within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 72nd Street, 102 feet of depth, 5,109 square feet of lot area and is occupied by an existing 16-story with cellar mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings

are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the

MINUTES

building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 3,974 square feet of floor area on the first floor with the PCE reception, exercise studio, and areas for restrooms and showers, office and storage; and

WHEREAS, the PCE began operation on January 4, 2019, as “Orangetheory Fitness,” and operates daily from 5:00 a.m. to 10:30 p.m.; and

WHEREAS, the applicant submits that the PCE operator retained sound engineers to conduct acoustical testing in the PCE space to assess and mitigate the potential noise impact from the PCE operations, recommending that the applicant maintain stud track isolation at the top and bottom stud tracks to reduce the possibility of impact vibration entering the walls and traveling up the studs; and all riser penetrations between the spaces be sealed with non-hardening caulk such as silicone to prevent airborne noises from traveling between the units; and

WHEREAS, the applicant further represents that attenuation measures are maintained within the ceiling, walls and floor of the PCE to prevent noise and vibration disturbance to other portions of the building and submitted photographs demonstrating the installation of such measures throughout the PCE space; these measures include: suspended spring-hung sound barrier ceiling with two layers of gypsum board; a spring isolator and six-inch sound attenuation blankets; stud track isolation system maintained within the walls; the rowing machines and treadmills are maintained above a platform comprising of a rubber mat followed by multiple layers of plywood on top of neoprene isolators; and, five inches of pads are maintained throughout the free-weight area and behind the rowing machines; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use at the subject site is consistent with the character of the immediate surrounding area, which includes a mix of compatible uses including offices, banks, retail stores, eating and drinking establishments and other PCEs; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, weight reduction, body building and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the sound attenuation measures maintained within the PCE ensure no adverse effects are caused from the operation of PCE at the premises or within the surrounding neighborhood; and

WHEREAS, the applicant states that a sprinkler system and an approved fire alarm system, including connection of the interior fire alarm system to an FDNY-approved central station, is maintained within the PCE space; and

WHEREAS, by letter dated October 31, 2019, the Fire Department states that the premises are protected by a combination fire suppression system (standpipe and sprinkler) and fire alarm system with a central office connection, which have been tested satisfactory according to Fire Department rules and regulations; based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, by Certificate of No Effect (“CNE”) “CNE-19-31380,” issued July 29, 2019, the New York City Landmarks Preservation Commission (“LPC”) approved work consisting of exterior alterations at the ground floor storefront of the West 72nd Street facade, including the installation of an orange-and-red-finished dimensional aluminum letters (“Orangetheory”) attached to a metal channel within the transom; white vinyl-applied signage (“FITNESS”) at the transoms and graphics at the display windows and doors; and a metal blade sign and armature featuring a raised orange splat logo at the eastern stone pier; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA109M, dated March 25, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the conditions of a PCE on a portion of the first floor, is

MINUTES

appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-6A zoning district and in the Upper West Side/Central Park West Historic District, the operation of a physical culture establishment on a portion of the first floor of an existing 16- story with cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 29, 2019”- (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 4, 2029;

THAT sound attenuation measures shall be maintained to ensure no disturbance to neighbors;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system—including connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum three foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-63-BZ”), shall be obtained within one year, by November 19, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 19, 2019.

2016-4469-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Winston Network, Inc., owner.

SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for adjourned hearing.

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – Variance (§72-21) to permit construction of a cellar and three (3) story residential condominium with six (6) dwelling units and ten (10) off-street parking spaces contrary to ZR §22-11 (multi-family buildings not permitted in an R1-2 zoning district; ZR §§ 23-00 & 25-00) no bulk or parking regulations for multi-family buildings. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M. for continued hearing.

2017-261-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M. for continued hearing.

2017-270-BZ

APPLICANT – Edward Lauria, P.E., for Daniel Apice, owner.

SUBJECT – Application September 21, 2017 – Special Permit (§73-53) to permit the enlargement of an automotive body repair facility (UG 17B) contrary to ZR §43-121 (Maximum Permitted Floor Area). M1-1 zoning district.

MINUTES

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784,
Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to March 17,
2020, at 10 A.M., for continued hearing.

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family
LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special
Permit (§73-36) to permit the operation of physical cultural
establishment (*CrossFit*) within an existing one store
commercial building contrary to ZR §42-10 located in M1-4
zoning district.

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot
8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to March 17,
2020, at 10 A.M., for adjourned hearing.

2018-171-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
The Frick Collection, owner.

SUBJECT – Application October 30, 2018 – Variance (§72-
21) to permit an addition to an existing museum and library
buildings (The Frick Collection) contrary to ZR §24-591
(height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382
(rear yard equivalent) and ZR §§23-661 and 23-662 (street
wall location and setback). R10 (Special Park Improvement
District), R8B (Limited Height District 1-A) Upper East
Side Historic District and an individual New York City
Landmark.

PREMISES AFFECTED – 1 East 70th Street, Block 1385,
Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to January 28,
2020, at 10 A.M., for adjourned hearing.

2019-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jimmy
Guindi, owner.

SUBJECT – Application February 28, 2019 – Special
Permit (§73-622) to permit the enlargement of an existing
single-family residence contrary to ZR 23-47 (rear yard); ZR
23-143 (open space) and 23-461(a) (side yard). R4 Special
Ocean Parkway District.

PREMISES AFFECTED – 2311 East 4th Street, Block 7156,
Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February
11, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

MINUTES

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 19, 2019
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Sheta, Commissioner Ottley-Brown and
Commissioner Scibetta.

ZONING CALENDAR

2019-80-BZ

CEQR #19-BSA-123M

APPLICANT – Eric Palatnik, P.C., for First Flatiron LLC,
owner; MJM Boxing 2 LLC, lessee.

SUBJECT – Application April 26, 2019 – Special Permit
(§73-36) to permit the legalization of a physical culture
establishment (*Title Boxing Club*) to be located on the
second floor of an existing 10-story mixed use commercial
and residential building contrary to ZR §32-10. C6-4A
Flatiron District located within the Ladies Mile Historic
District.

PREMISES AFFECTED – 15 West 18th Street, Block 820,
Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta5
Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of
Buildings (“DOB”), dated April 3, 2019, acting on DOB
Alteration Type I Application No. 123706686, reads in
pertinent part:

Proposed Physical Culture Establishment [as
defined in section ZR 12-10] is not permitted as
of right in C6-4A Zoning Districts and is contrary
to section ZR 32-10. Use as the Physical Culture
heath establishment in C6-4A Zoning Districts
shall comply with regulation of section ZR 32-31
{uses by special permit of the Board of Standards
and Appeals}; and

WHEREAS, this is an application under ZR §§ 73-36
and 73-03 to legalize, in an C6-4A zoning district and in the
Ladies’ Mile Historic District, the legalization of a physical
culture establishment (“PCE”) on the second floor of an
existing ten-story mixed use commercial and residential
building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this
application on November 19, 2019, after due notice by
publication in *The City Record*, and then to decision on that
same date; and

WHEREAS, Community Board 5, Manhattan, waived

its recommendation for this application; and

WHEREAS, the Board was in receipt of testimony
from a resident in the building in which the PCE is located
citing concerns regarding loud noises and vibrations
emanating from the subject PCE early in the morning and
late the evening; and

WHEREAS, the subject site is located on the northern
side of West 18th Street, between Fifth Avenue and Sixth
Avenue, in C6-4A zoning district, and in the Ladies’ Mile
Historic District, in Manhattan; and

WHEREAS, the subject site has approximately 50 feet
of frontage along West 18th Street, 4,600 square feet of lot
area and is occupied by ten-story with cellar mixed-use
residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X,
C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in
certain special districts as specified in the provisions of such
special district, the Board may permit physical culture or
health establishments as defined in Section 12-10 for a term
not to exceed ten years, provided that the following findings
are made:

- (1) that such *use* is so located as not to impair the
essential character or the future use or
development of the surrounding area; and
- (2) that such use contains:
 - (i) one or more of the following regulation
size sports facilities: handball courts,
basketball courts, squash courts,
paddleball courts, racketball [sic]
courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500
square feet; or
 - (iii) facilities for classes, instruction and
programs for physical improvement,
body building, weight reduction,
aerobics or martial arts; or
 - (iv) facilities for practice of massage by
New York State licensed masseurs or
maseuses. Therapeutic or relaxation
services may be provided only as
accessory to programmed facilities as
described in paragraphs (a)(2)(i)
through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional
findings that must be made where a physical culture or
health establishment is located on the roof of a commercial
building or the commercial portion of a mixed building in
certain commercial districts; and

WHEREAS, because no portion of the subject PCE is
located on the roof of a commercial building or the
commercial portion of a mixed building, the additional
findings set forth in ZR § 73-36(b) need not be made or
addressed; and

WHEREAS, ZR § 73-36(c) provides that no special
permit shall be issued unless:

- (1) the Board shall have referred the application
to the Department of Investigation for a

MINUTES

background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 3,909 square feet of floor area on the second floor of the subject building, including an entry vestibule, retail space, a consultation circle, bathrooms, an exercise studio with heavy bag stand, storage room, janitorial closet, and electrical room; and

WHEREAS, the PCE has been in operation since January 7, 2019, as “Title Boxing Club,” with the following hours of operation: Monday and Wednesday from 6:30 a.m. to 9:30 p.m.; Tuesday and Thursday from 5:30 a.m. to 9:30 p.m.; Friday from 6:30 a.m. to 8:30 p.m.; and Sunday 9:30 a.m. to 1:00 p.m.; and

WHEREAS, in addition, the applicant submits that sound-attenuation measures have been provided within the space so as to not disturb other tenants in the building including two zero-clearance doors in the interior PCE to block sound from entering elevator shafts; sheetrock on interior PCE areas near the air ventilation shaft; and overlaid mass loaded vinyl added to prevent sound from traveling to the hallway; and

WHEREAS, in response to community concerns, the Board notes that the PCE must maintain sound-attenuation measures to prevent disturbance to adjacent residences; and

WHEREAS, the applicant represents that the PCE will not adversely impact the privacy, quiet, light, and air in the neighborhood because PCE use is consistent with the vibrant commercial area in which it is located, it is fully contained within an existing building, and the subject site is well served by public transit; and

WHEREAS, the Board finds that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for boxing-based classes, instruction and programs for physical improvement, body building, weight reduction, and martial arts; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible for issuance of the special permit; and

WHEREAS, the Department of Investigation (“DOI”) has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory; and

WHEREAS, the applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated November 1, 2019, the Fire Department states these premises are protected by fire suppression systems (standpipe and sprinkler), which have been tested and found to be satisfactory according to Fire Department rules and regulations; the Department also finds that these premises do not require a fire alarm system; based on the foregoing, the Department has no objections to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, in response to the Board’s comments, the applicant submitted a Landmarks Preservation Commission (“LPC”) Certificate of No Effect (“CNE”) No. 19-25159 issued on September 14, 2018 permitting the installation of one condensing unit on existing dunnage of a one-story rear extension and installation of three through-window HVAC louvers and constructing nonbearing partitions and finishes, as well as mechanical, plumbing, electrical and HVAC work and revised plans to provide an existing and proposed first floor plan showing egress from the building as well as BSA standard notes regarding accessibility; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA123M, dated April 22, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR

MINUTES

§§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated without a special permit.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby issue a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, in C6-4A zoning district, the operation of a physical culture establishment (“PCE”) on the second floor of an existing ten-story mixed use commercial and residential building, contrary to ZR § 32-10; on condition that all work, site conditions, and operations shall conform to drawings filed with this application marked “Received November 19, 2019” - (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 7, 2029;

THAT sound attenuation shall be maintained to prevent disturbance to adjacent residential uses;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE, as indicated on the Board-approved plans, so as to prevent noise or vibration disturbance to nearby residential spaces;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-80-BZ”), shall be obtained within one year, by November 19, 2020;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

granted; and

THAT the Department of Buildings must ensure compliance with all other applicable pro-visions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 19, 2019.

2019-22-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita Ramchandani, owner.

SUBJECT – Application January 28, 2019 – Variance (§72-21) to permit the construction of a semi-detached single-family home contrary to use (ZR §22-12(a)(1); FAR (ZR §23-142); side yards (ZR §23-461) and parking (ZR §25-22). R3X zoning district.

PREMISES AFFECTED – 24-47 95th Street, Block 1106, Lot 44, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to February 11, 2019, at 10 A.M. for continued hearing.

2019-26-BZ

APPLICANT – Akerman, LLP, for 233 Nevins Street LLC, owner; The Cliffs at Gowanus, LLC, lessee.

SUBJECT – Application February 4, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Cliffs at Gowanus*) a portion of the first floor, and on the second, third, and fourth floors contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 233 Nevins Street aka 236 Butler Street, Block 412, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to February 4, 2019, at 10 A.M. for continued hearing.

2019-30-BZ

APPLICANT – Eric Palatnik, P.C., for Georgy Reyderman, owner.

SUBJECT – Application November 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2705 East 28th Street, Block 8791, Lot 120, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 4, 2019, at 10 A.M. for continued hearing.

MINUTES

2019-93-BZ

APPLICANT – Jay Goldstein, Esq., for Khal Zichron Avrohom Yaakov, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-story plus cellar house of worship (UG 4) (*Khal Zichron Avrohom Yaakov*) contrary to ZR §24-11 (floor area/FAR), ZR §24-34 (front yard), ZR §24-35 (side yards), ZR §24-36 (rear yard) and ZR §25-31 (Parking). R2 zoning district.

PREMISES AFFECTED – 3203 Bedford Avenue, Block 7607, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 4, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

MINUTES

***CORRECTION**

This resolution adopted on February 5, 2019, under Calendar No. 244-97-BZ and printed in Volume 104, Bulletin No. 7, is hereby corrected to read as follows:

244-97-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Parkwood Realty Associates, LLC, owner; Crunch 83rd Street LLC, lessee.

SUBJECT – Application October 18, 2018 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (Crunch Fitness) which expires on November 4, 2018; Extension of Time to Obtain a Certificate of Occupancy which expired on September 25, 2008; Waiver of the Board’s Rules. C2-5/R8B zoning district.

PREMISES AFFECTED – 158/62 West 83rd Street, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit, which expired on November 4, 2018; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 83rd Street, between Amsterdam Avenue and Columbus Avenue, in an R8B (C2-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 58 feet of frontage, 116 feet of depth, approximately 6,586 square feet of lot area, and is occupied by a six- (6) story plus cellar mixed-use residential and commercial building; and

WHEREAS, the subject physical culture establishment (“PCE”) is located within portions of the cellar (6,093 square feet), first floor (6,093 square feet) and second floor (6,093 square feet) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1960, when, under BSA Cal. No. 536-37-BZ, the Board granted a variance to permit, in a business and residence use, B area district, the construction of a second floor extension into the residence use portion of

the plot that exceeded the permitted area coverage and without the required rear yard, and extension of present commercial use, on condition that the work be done in accordance with plans filed with the application; all laws, rules and regulations applicable be complied with; all permits required and a certificate of occupancy be obtained and all work completed within one (1) year, by May 3, 1960; and

WHEREAS, on November 4, 1998, under the subject calendar number and BSA Cal. No. 243-97-BZ1, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a PCE in the cellar and first floor of a two-(2) story plus cellar commercial building located at 158 West 83rd Street, and in the cellar and first floor of a four-(4) story plus cellar commercial building located at 150 West 83rd Street, on condition that all work substantially conform to plans, as they apply to the objections, filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; fire prevention measures be maintained in accordance with the BSA-approved plans; the special permit be limited to a term of ten (10) years, to expire on November 4, 2008; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one (1) year of this grant, by November 4, 1999; and

WHEREAS, on December 21, 1999, under the subject calendar number, the Board amended the resolution to permit the legalization of the expansion of the existing PCE onto the second floor of the subject premises, on condition that the premises remain graffiti free at all times; that all signs and canopies be maintained in accordance with the requirements of the Zoning Resolution and the Administrative Code of the City of New York; that the premises be maintained in substantial compliance with the proposed plans submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by December 21, 2000; and

WHEREAS, on September 25, 2007, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and granted an extension of the term of the special permit for a term of ten years from the expiration of the prior grant to expire on November 4, 2018, on condition that any and all work substantially conform to plans,

1At the time of the initial special permit grant, the PCE was located at two (2) distinct properties and, thus, was issued two (2) related approvals: BSA Cal. No. 243-97-BZ at 150 West 83rd St (Lot 54) and the subject calendar number at the subject site. The special permit granted under BSA Cal. No. 243-97-BZ expired on November 4, 2008, and was not subsequently renewed.

MINUTES

as they apply to the objections, filed with the application there be no change in ownership or operating control of the PCE without prior approval from the Board; a certificate of occupancy be obtained within one (1) year, by September 25, 2008; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on October 23, 2012, under BSA Cal. No. 86-12-BZ, the Board granted a special permit, pursuant to ZR §§ 73-63 and 73-03, to permit the enlargement of an existing two- (2) story non-residential building containing PCE use, which created non-compliance with regards to floor area, contrary to ZR § 23-142, on condition that any and all work substantially conform to plans, as they apply to the objections, filed with the application; the bulk parameters of the proposed enlarged building be a total floor area of 27,291 square feet and a floor area ratio of 4.2, as illustrated on BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; substantial construction be completed within four (4) years, by October 23, 2016; and the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the previous term of the special having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there has been no change in ownership or operation and that the subject PCE continues to operate as “Crunch”; and the hours of operation continue to be 5:30 a.m. to 11:00 p.m. Monday through Thursday, 5:30 a.m. to 10:00 p.m. Friday, and 8:00 a.m. to 9:00 p.m. Saturday and Sunday; and

WHEREAS, the applicant represents that an approved sprinkler system and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—are maintained throughout the PCE space; and

WHEREAS, by letter dated February 4, 2019, the Fire Department issued a conditional letter of approval and stated that the Bureau’s Licensed Public Place of Assembly (“LPPA”) Unit performed an inspection on November 11, 2018, and issued violations for failure to maintain the fire alarm system; at the time of inspection, the fire alarm panel showed the system silenced; in addition, FDNY summonses (repeat) were issued for failure to provide records and certificates of fitness for the fire alarm and sprinkler system; the “letter of approval” submitted by the applicant for the fire alarm system covers only the residential portion of the

building, but a review of Fire Department records shows that the fire alarm system for the PCE space was inspected and approved; in addition, the fire suppression systems (standpipe and sprinkler) were inspected and tested satisfactory to the Department standards; and that the Department has no objection to the Board rendering a decision on this application, as the Bureau of Fire Prevention will continue to inspect the premises and enforce any outstanding violation orders; and

WHEREAS, pursuant to ZR § 73-03(f), the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of the term of the special permit is appropriate, with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 4, 1998, as amended through September 25, 2007, so that, as amended, this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on November 4, 2028, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received September 12, 2018’-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 4, 2028;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the premises shall remain graffiti-free at all times;

THAT the operator shall cure any outstanding Fire Department violation orders;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 244-97-BZ”) shall be obtained within one (1) year, by February 5, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by

MINUTES

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, February 5, 2019.

***The resolution has been amended to correct part which read: ...and 8:00 a.m. to 9:00 p.m. Sunday; and now reads ...and 8:00 a.m. to 9:00 p.m. Saturday and Sunday; and. Corrected in Bulletin Nos. 45-47, Vol. 104, dated November 29, 2019.**

BULLETIN

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December 6, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|--------------------------------------|-----|
| DOCKET | 875 |
| CALENDAR of December 17, 2019 | |
| Morning | 876 |
| Afternoon | 877 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, November 26, 2019**

Morning Calendar878

Affecting Calendar Numbers:

509-37-BZ 202-01 Rocky Hill Road aka 202-02 47th Avenue, Queens
194-97-BZ 84-12 164th Street, Queens
200-98-BZ 633 Third Avenue, Manhattan
318-08-BZ 345-349 Second Avenue aka 247-249 East 20th Street, Manhattan
335-59-BZ 3485-95 Atlantic Avenue & 315-321 Nichols Avenue, Brooklyn
389-85-BZ 2090 Bronxdale Avenue, Bronx
245-03-BZ 160-11 Willets Point Boulevard, Queens
24-09-BZ 78-10 164th Road, Queens
2018-129-A 484F Sharrotts Road, Staten Island
2018-178-A 2 Oaktree Way aka 300 Ocean Terrace, Staten Island
2019-166-A 8 Madigan Place, Staten Island
43-11-BZ 1926 East 21st Street, Brooklyn
268-14-BZ 231-06/10 Northern Boulevard, Queens
231-15-BZ 5278 Post Road, Bronx
2018-3-BZ 154-160 West 124th Street, Manhattan
2019-23-BZ 290 Mulberry Street aka 41 East Houston Street, Manhattan
2019-163-BZ 678 Broadway, Manhattan
157-15-BZ 3925 Bedford Avenue, Brooklyn
2018-59-BZ 3030 Northern Boulevard, Queens
2018-168-BZ 1769 East 26th Street, Brooklyn
2018-191-BZ 215 North 10th Street, Brooklyn

Afternoon Calendar896

Affecting Calendar Numbers:

2019-98-BZ 31-57 31st Street, Queens
2019-27-BZ 4533 18th Avenue, Brooklyn
2019-60-BZ 132-02 89th Avenue, Queens
2019-77-BZ 1134 Fulton Street, Brooklyn
2019-159-BZ 249 Church Street, Manhattan
2019-167-BZ 2467 Jerome Avenue aka 2465 Jerome Avenue, 1 W Fordham Road, Bronx
2019-184-BZ 45-20 83rd Street and 80-52 47th Street, Queens
2019-194-BZ 50 Titus Avenue, Staten Island

DOCKETS

New Case Filed Up to November 26, 2019

2019-296-BZ

84 Franklin Street, Block 175, Lot(s) 0007, Borough of **Manhattan, Community Board: 1.**
Special Permit (§73-36) to permit the operation of a physical cultural establishment (Aire Ancient Baths) contrary to ZR §32-10. C6-2A zoning district. Tribeca East Historic District. C6-2A district.

2019-297-BZ

588 Fifth Avenue, Block 1263, Lot(s) 0038, Borough of **Manhattan, Community Board: 5.**
Special Permit (§73-36) to permit the operation of a physical cultural establishment (Konnectgolf) contrary to ZR §32-10. C5-3 Midtown Special Purpose District. C5-3 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

**REGULAR MEETING
DECEMBER 17, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 17, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

530-32-BZ

APPLICANT – Sheldon Lobel, P.C., for Oceana Holding Corp., owner.

SUBJECT – Application August 29, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance which expired on June 26, 2019; Waiver of the Board’s Rules. C1-3/R6 and R6 zoning districts.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #13BK

74-49-BZ

APPLICANT – Akerman LLP, for 515 Seventh Avenue, owner.

SUBJECT – Application June 27, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of a public parking garage which expired on June 28, 2019; Amendment to reflect a reduction of parking spaces from 360 to 280 through the elimination of parking stackers on the roof level. M1-6 Special Garment Center District.

PREMISES AFFECTED – 515 Seventh Avenue, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

187-97-BZ

APPLICANT – Nasir J. Khanzada, for Charanjit Singh, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. The amendment seeks to remove lot 39 from the application as well as enlarge the existing building by 133.68 square feet. C2-3/R5D zoning district.

PREMISES AFFECTED – 148-02 Rockaway Boulevard, Block 12103, Lot 25, Borough of Queens.

COMMUNITY BOARD #12Q

1-11-BZ

APPLICANT – Carter Ledyard & Milburn LLP by Paul J. Proulx Esq, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application September 16, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) which permit a ground floor enlargement to a pre-existing non-complying commercial building which expired on September 20, 2015. C2-3/R6 LH-1 Limited Height District, Brooklyn Heights Historic District.

PREMISES AFFECTED – 189-191 Atlantic Avenue, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

CALENDAR

REGULAR MEETING DECEMBER 17, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 17, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2018-15-BZ

APPLICANT – Crown Architecture & Consulting, D.P.C., for HAG Realty LLC, owner.

SUBJECT – Application January 31, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Marcelo Garcia Brazilian Jiu Jitsu*) on the third floor of an existing building contrary to ZR §32-10. C6-2A zoning district.

PREMISES AFFECTED – 250 West 26th Street, Block 775, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #4M

2019-180-BZ

APPLICANT – Pryor Cashman LLP, for Ventana Condominium, owner; CorePower Yoga, lessee.

SUBJECT – Application June 24, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*CorePower Yoga*) to be located on a portion of the first floor of an existing fifteen-story mixed-use building contrary to ZR §32-10. C1-8X zoning district.

PREMISES AFFECTED – 1253 Lexington Avenue, Block 1532, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

2019-189-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 361 Henry LLC, owner; Blink 97-01 Northern Blvd., Inc., lessee.

SUBJECT – Application July 15, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within a proposed building contrary to ZR §32-10. C2-4R6A zoning district.

PREMISES AFFECTED – 97-01 Northern Boulevard, Block 1427, Lot 38, Borough of Queens.

COMMUNITY BOARD #2Q

2019-197-BZ

APPLICANT – Eric Palatnik, P.C., for 155 WEST 23 LEASEHOLD LLC, owner; Solidcore New York LLC, lessee.

SUBJECT – Application July 24, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Solidcore*) contrary to ZR §22-10. C6-3X zoning district.

PREMISES AFFECTED – 155 West 23rd Street, Block 799, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 26, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

509-38-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka 202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, with continued hearings on April 30, 2019, June 11, 2019, August 6, 2019 and November 26, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, recommends approval of the amendment on condition that the term be limited to five years; the hours of operation be posted; an environmental review regarding the removal of the gas tanks be conducted; the manager’s contact information be provided for future site problems; the illuminated signage be shut off at night; information regarding the contents of the metal containers on site be provided; the building and site undergo power washing; tree stump in front of the front office, the dead vehicle storage, the loose tire pile, excess garbage, including weeds all be removed; and the security cameras be confirmed as working; and

WHEREAS, the Board received testimony from a civic association within whose district the subject site is

located recommending approval of the application on condition that the term be limited to five years; all work on the site, including landscaping, be completed before the granting the application; no un-plated vehicles be stored on site; no storage of other vehicles on site; only vehicles awaiting service be stored on site over night; no vehicles be parked on the sidewalk; work on vehicles should only be done in the bays; and appropriate hours of operation be stated; and

WHEREAS, the subject site is bounded by 47th Avenue to the north, 202nd Street to the west, and Rocky Hill Road to the south, in an R3-1 zoning district, in Queens; and

WHEREAS, the site has approximately 80 feet of frontage along 47th Avenue, 84 feet of frontage along 202nd Street, 7,436 square feet of lot area and is occupied by an existing one-story automotive repair (Use Group (“UG”) 16) building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1938, when, under the subject calendar number, the Board granted a variance to permit the demolition of an existing building and the erection of a new building to be used as an office and lubritorium in connection with an existing gasoline station on condition that the entire plot be levelled substantially to the grade of surrounding streets; the accessory building be constructed toward the easterly portion of the plot and be arranged for office, lubritorium and washing; the accessory building not exceed one story in height and be constructed of fireproof materials, except that the roof beams, roof boarding, window frames and sash, door frames and doors may be of wood, provided the ceilings are fire-retarded throughout in accordance with the Rules of Board of Standards and Appeals; the boiler room be separated from the balance of the building by fireproof construction and enterable only from the exterior of the building; overhead doors to the lubritorium section be constructed provided the greasing equipment is of the hydraulic lift type; gasoline pumps erected be not nearer than 15 feet to any street building line; the entire premises where not covered by accessory building be paved with cement paving, colprovia or asphalt or other impervious material; there be erected on the interior lot lines a masonry wall not less than six feet in height continuously from Rocky Hill Road to 47th Avenue, except the wall may be four feet in height for a distance of 15 feet back from either street building line; there be constructed at the intersection of 47th Avenue and 202nd Street and at the intersection of 202nd Street and Rocky Hill Road a solid block of concrete not less than one foot in height and not less than five feet in length from the point of intersection along each street; when the surrounding street are paved and curbs are installed, the entrances to premises be restricted to two from Rocky Hill Road not over 20 feet in width each and two from 202nd Street and two from 47th Avenue of the same width; no automobile repairing be conducted on the premises; there be no parking or storage of cars other than those being serviced; no portable gasoline

MINUTES

tank be used on or from the premises; lights for illumination be so arranged as to reflect away from adjoining residential occupancies; signs be restricted to permanent signs attached to the façade of the accessory building to illuminated globes of the pumps, precluding any roof sign and temporary signs but permitting the erection to two post standards at the street intersections within the building line for supporting signs, which may be illuminated, advertising the brand of gasoline on sale, provided such signs do not extend beyond the building line for a distance of more than four feet; plans be submitted for approval by the Chairman on behalf of the Board before same are filed with the Borough's Superintendent; and, after approval of plans, all permits be obtained and all work be completed within one year thereafter; and

WHEREAS, on March 1, 1955, under the subject calendar number, the Board amended the resolution to permit extension of the accessory building for use as a wash bay and additional lubritorium on condition that the design and arrangement be similar to the existing building; there be no cellar under the proposed extension and no opening on the rear wall to the premises in the rear; in all other respects the resolution be complied with where not inconsistent with the terms of this amended resolution and that all permits be obtained and all work completed within the requirements of the Zoning Resolution; and

WHEREAS, the applicant now seeks an amendment to permit a change in the use from gasoline service station with lubritorium and wash bay (UG 16) to an automotive service station (UG 16); and

WHEREAS, pursuant to ZR § 11-413, the Board may permit a change in use to another non-conforming use provided that such change of use will not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents the site will retain the one-story 1,506 square foot building with an automotive service station; and

WHEREAS, the applicant represents all signage will be in compliance with the C1 sign regulations, and the site will have 29.3 square feet of illuminated non-flashing signage; and

WHEREAS, the applicant represents that there is an existing four-foot-high chain link fence separating the site from residential neighbors in the rear; trash is contained in an enclosure at the side of the building; there are no windows on the existing building facing residential neighbors; and

WHEREAS, the applicant represents, with respect to ingress to and egress from the site, the entrances and exits currently at the site are designed to ensure that vehicular movement in and from the site can circulate with a minimum of obstruction of streets and sidewalks; and

WHEREAS, the applicant represents that the site provides an 11'-1" and a 36'-6" curb cut on 47th Avenue, one 43'-8" curb cut along 202nd Street, and one 31-foot curb cut on Rocky Hill Road; and

WHEREAS, the applicant represents that the site has seven proposed parking spaces with one reserved for handicapped parking; and

WHEREAS, based upon its review of the record, the Board has determined that the requested amendment to the previous Board approval is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, pursuant to ZR § 11-413, dated November 1, 1938, as amended through March 1, 1955, so that as amended this portion of the resolution shall read: "to *permit*, with the possibility of a compliance hearing at the request of community members; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received July 18, 2019"- (8) Eight sheets; and *on further condition*:

THAT there be no parking or storage of cars other than those being serviced;

THAT no portable gasoline tank shall be used on or from the premises;

THAT lights for illumination be so arranged as to reflect away from adjoining residential occupancies;

THAT signs be restricted to permanent signs attached to the façade of the accessory building to illuminated globes of the pumps, precluding any roof sign and temporary signs but permitting the erection to two post standards at the street intersections within the building line for supporting signs, which may be illuminated, advertising the brand of gasoline on sale, provided such signs do not extend beyond the building line for a distance of more than four feet;

THAT there be no cellar under the proposed extension and no opening on the rear wall to the premises in the rear;

THAT any signage shall comply with C1 sign regulations;

THAT any illuminated signage and lighting shall not shine on residential property;

THAT the seal coat asphalt and black top surface throughout the lot to the property line on both the inside and street line side of the fence shall be resurfaced and restriped;

THAT the site shall be maintained free of debris and graffiti;

THAT landscaping and fencing shall be maintained throughout the site;

THAT only cars awaiting service shall be parked on site and the site shall have no car storage;

THAT no cars shall be parked on the sidewalk;

THAT the signs that state "no parking on sidewalk" shall be maintained;

THAT all work shall be completed within the boundaries of the zoning lot;

THAT all business operations shall be retained on the boundaries of the zoning lot;

THAT no on-site storage containers shall be permitted, only the dumpster enclosure shown on the approved plan;

THAT all dumpsters and containers shall be kept in enclosure;

THAT street tree planting shall be pursued with the

MINUTES

Department of Parks;

THAT the fuel tank shall be removed and reinstalled pursuant to permits;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 509-38-BZ”), shall be obtained within one year, by November 26, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 26, 2019.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corp., owner; Quick Stop Auto Repair Inc., lessee.

SUBJECT – Application March 9, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of an automotive repair facility and auto sales (Use Group 16B) which expired on November 29, 2017; Extension of Time to Obtain a Certificate of Occupancy which expired on July 20, 2010; Waiver of the Board’s Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, Block 9792, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, granted pursuant to ZR §§ 72-01 and 72-21, previously granted by the Board which permitted the operation of an automotive repair establishment, and expired on November 29, 2017, and an extension of time to obtain a certificate of occupancy, which expired on July 20, 2010; and

WHEREAS, a public hearing was held on this

application on July 16, 2019, after due notice by publication in *The City Record*, with continued hearings on September 10, 2019 and November 26, 2019 and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of 164th Street and 84th Road, in an R4B zoning district, in Queens; and

WHEREAS, the site has approximately 102 feet of frontage along 164th Street, 114 feet of frontage along 84th Road, 10,861 square feet of lot area and is occupied by an automotive repair establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 1953, when, under BSA Cal. No. 735-52-BZ, the Board granted a variance for the erection and maintenance of a gasoline station, lubritorium, car wash, motor vehicle repair shop and storage of motor vehicles for a term of 15 years, expiring January 13, 1968, on condition that the plot be leveled substantially to the grade of 164th Street and arranged and designed as indicated on revised plans; there be no cellar under the accessory building; the accessory building be constructed with face brick and comply in all other respects with the requirements of the Building Code and be arranged and designed as proposed such plans; that pumps be erected not nearer than 15 feet to the street building line of 164th Street and be of an approved low type; there be erected on the interior lot lines to the north and west a masonry wall to a height of not less than 2 feet with a steel picket fence on top to a total height of not less than 5’6”; a similar wall be constructed along the street line of 84th Road for a distance of approximately 75 feet as shown; landscaped areas with suitable plant material be maintained as proposed against such wall, properly protected with a concrete curbing not less than six inches high and six inches in width; gasoline storage tanks not exceed ten 550-gallon tanks; curb cuts be limited to two on 164th Street, not over 30 feet in width each with no portion of the curb cut erected nearer than 5 feet to a lot line as prolonged; there may be a curb cut on 84th Road within 25 feet from the intersection of 84th Road not exceeding 20 feet in width; within the intersection at the building line, there be erected a block of concrete not less than 12 inches in height extending for a distance of not less than 5 feet along either street building line; the balance of the premises where not occupied by accessory building, pumps and planting be paved with concrete or asphaltic paving; the sidewalks and curbing around the premises be constructed or restored to the satisfaction of the Borough President; such portable fire fighting appliances be maintained as the Fire Commissioner directs; signs be restricted to a permanent sign attached to the accessory buildings and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs but

MINUTES

permitting the erection within the building line at the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale; such sign not extend more than four feet beyond the street line; minor repairing may be permitted for adjustments only with hand tools, maintained entirely within the accessory building; there may be parking of motor vehicles, waiting to be serviced, to the south of the accessory building; and, all permits required be obtained and all work completed within the requirements of the Zoning Resolution; and

WHEREAS, on May 7, 1968, under BSA Cal. No. 735-52-BZ, the Board waived its Rules of Procedure and amended the variance to extend the term for 10 years, to expire on January 13, 1978, on condition that, other than as amended, the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on November 29, 1977, under BSA Cal. No. 735-52-BZ, the Board further amended the variance to extend the term for 10 years, to expire on November 29, 1987, on condition that, other than as amended, the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 29, 1978; and

WHEREAS, on September 11, 1990, under BSA Cal. No. 735-52-BZ, the Board waived its Rules of Procedure and further amended the variance to extend the term for 10 years, to expire on November 29, 1997, on condition that the premises conform with the revised drawings; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained one year, by September 11, 1991; and

WHEREAS, on December 22, 1998, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the change in use from a motor vehicle repair shop and gasoline service station (Use Group 16) to a motor vehicle repair shop and auto sales (Use Group 16), adding a new lubricatorium and inspection area, and legalized the expansion of the facility onto an adjoining lot, on condition that all work substantially conform to drawings as they apply to the objections noted in the resolution, filed with the application; the hours of operation be from 7:00 a.m. to 7:00 p.m., Monday through Saturday, and closed Sunday; no vehicles be parked on the sidewalk; the premises be kept clean and free of debris; the premises remain graffiti free at all times; all fencing be maintained in accordance with BSA approved plans; the easement on Lot 137 be in full effect for all residents of Block 9792 and no motor vehicle repairs take place on said easement; no body/fender work or auto painting take place at the premises; the easement or ingress/egress at the rear of the premises, which is used by near-by residents, remain fully accessible and not be obstructed in any manner; all repairs to motor vehicles taking place on Lot 137 take place within the enclosed structure and not outside; the term of the variance

be limited to ten years, to expire November 29, 2007; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a new certificate of occupancy will be obtained within one year, by December 28, 1999; and

WHEREAS, on October 20, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended to the variance for ten years, to expire on November 29, 2017, the time to obtain a certificate of occupancy, to July 20, 2010, and to permit the no-build condition of the previously approved addition of a service bay on the south end of the service station building, on condition that all use and operations substantially conform to drawings filed with the application; all conditions from the prior resolution not specifically waived by the Board remain in effect; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration not related to the relief granted; and

WHEREAS, the term and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than one year since the expiration of the term, and two years since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the Board's Rules), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that the use at the site has been continuous from the expiration of the term and the filing of the application; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, as previously approved by the Board; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding the condition of the site with respect to the fencing, landscaping, and location of the dumpster; and

WHEREAS, in response, the applicant relocated and enclosed the dumpster and provided plans demonstrating sufficient planting and reslating of the fence; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards

MINUTES

and Appeals does hereby *waive* its Rules of Practice and Procedure and *amend* the resolution, dated December 22, 1998, as amended through October 20, 2009, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten years, expiring November 29, 2027; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received November 6, 2019”- Three (3) sheets; and *on further condition*:

THAT the wheels stops at the head of the parking spaces shall be installed along the landscaped area(s);

THAT fencing and landscaping shall be maintained as reflected on the approved plans as to retain the dense visual buffer and barrier for the residential neighbors;

THAT trash enclosure shall be maintained with slatting surrounding four sides;

THAT trash shall be maintained within the dumpster at all times;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the hours of operation be from 7:00 a.m. to 7:00 p.m., Monday through Saturday, and closed Sunday;

THAT the premises shall be kept clean and free of graffiti and debris at all times;

THAT all fencing shall be maintained in accordance with BSA-approved plans;

THAT the easement on Lot 137 shall be in full effect for all residents of Block 9792 and that no motor vehicle repairs take place on said easement;

THAT no body/fender work or auto painting shall take place at the premises;

THAT the easement or ingress/egress at the rear of the subject premises, which is used by near-by residents, shall remain fully accessible and not be obstructed in any manner;

THAT all repairs to motor vehicles taking place on Lot 137 shall take place within the enclosed structure and not outside;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 194-97-BZ”), shall be obtained within one year by February 28, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 26, 2019.

200-98-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 633 Realty LLC, owner; TSI East 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment (New York Sports Club) on portions of the cellar level with entrance and ADA access on the first floor of a 41-story plus cellar commercial building which expired on April 30, 2018; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 633 Third Avenue, Block 1314 Lot(s) 1447, 1449, 1450, 1452 and 1453, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on April 30, 2018, and an extension of time to obtain a certificate of occupancy, which expired on September 15, 1999; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, with continued hearings on November 26, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application on condition that the extension of term be limited to five years; and

WHEREAS, the subject site is bounded by Third Avenue to the west, East 41st Street to the north and East 41st Street to the south, in a C5-3 zoning district and in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 198 feet of frontage along Third Avenue, 247 feet of frontage along each East 41st Street and East 40th Street, 48,728 square feet of lot area and is occupied by an existing 41-story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1998, when, under the

MINUTES

subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of a physical culture establishment (“PCE”), operated as New York Sports Club, on a portion of the cellar of the subject building, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; fire prevention measures be maintained in accordance with BSA-approved plans; the special permit be limited to a term of ten years, to expire on April 30, 2008; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one year by September 15, 1999; and

WHEREAS, on September 14, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term for a period of ten years, to expire on April 30, 2018, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term having expired April 30, 2018 and the time to obtain a certificate of occupancy having expired September 15, 1999, the applicant now seeks an extension; and

WHEREAS, in addition, because this application was filed more than 30 days after the expiration of the term and time to obtain a certificate of occupancy, the applicant requests waivers, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) requires a demonstration by the applicant that the use at the subject site has been continuous from the expiration of the term through the filing of the application and that substantial prejudice would result absent a waiver; and

WHEREAS, in response, the applicant provided invoices to continuously cover the period of April 30, 2018 through the filing of this application, and states that substantial prejudice would occur absent the waiver because the PCE has been operating at the subject premises for more than 20 years; the owner has expended more than \$1 million

to construct and maintain the facility; the owner has a long-term lease with the landlord which it cannot break without the applicant continuing to owe rent although not occupying the premises; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, New York Sports Club, as previously approved by the Board; and

WHEREAS, the applicant states that a building-wide sprinkler system with a central connection has been installed and maintained within the PCE space and there is an interior fire alarm with audible and visual alarms and alarm pulls at the exits, also with a central connection; and

WHEREAS, by letter dated October 21, 2019, the Fire Department states that are protected by a combination standpipe and sprinkler system, for which a hydrostatic pressure test was performed on December 19, 2018 and tested satisfactory according to the Fire Department rules and regulations; based on the foregoing, the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedure and *amend* the resolution, dated September 15, 1998, as amended through September 14, 2010, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten years, expiring April 30, 2028; *on condition*:

THAT fire prevention measures shall be maintained in accordance with BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 200-98-BZ”), shall be obtained within one year, by November 26, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or

MINUTES

configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 26, 2019.

316-08-BZ

APPLICANT – Greenberg Traurig, LLP, by Deirdre Carson, Esq., for Learning Spring School, owner.

SUBJECT – Application July 3, 2019 – Amendment of a previously approved Variance (§72-21) to permit a change in the previously approved site plan to reflect a proposed merger of the school site with an adjacent parcel. C1-5/R9A zoning district.

PREMISES AFFECTED – 345-349 Second Avenue aka 247-249 East 20th Street, Block 901, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a variance, previously granted by the Board, to change the Board-approved site plan to permit the merger of the subject zoning lot with an adjacent parcel, thereby creating an entirely new zoning lot and facilitating the transfer of the School’s unused floor area; and

WHEREAS, a public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northwest corner of Second Avenue and East 20th Street, in an R9A (C1-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 62 feet of frontage along Second Avenue, 79 feet of frontage along East 20th Street, 4,898 square feet of lot area and is occupied by a three-story and eight-story community-facility building with 27,492 square feet of floor area (5.61 FAR) used as a school (the “School”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 2009, when, under the subject calendar number, the Board granted a variance to permit the development of the subject building on condition that the bulk parameters of the building be a 38’-3” street wall height on the northern 20’-0” of the subject site’s frontage along Second Avenue, as illustrated on the Board-approved drawings; that any change in the use, occupancy, or operator of the School requires review and approval by the Board; that issuance of a permanent certificate of occupancy be conditioned on the issuance by the Department of Environmental Protection of a Notice of Satisfaction or

Notice of No Objection for the Remedial Closure Report; that a composite window–wall attenuation to achieve 39 dBA be required on the fifth-floor façade adjacent to the rooftop play area; that windows with an OITC rating of at least 31 dBA be installed on the east façade (Second Avenue frontage); that windows with an OITC rating of at least 26 dBA be installed on the south facade (East 20th Street frontage); and that central air-conditioning be provided; and

WHEREAS, the applicant now seeks an amendment to change the Board-approved site plan to permit the merger of the subject zoning lot with an adjacent parcel, thereby creating an entirely new zoning lot and facilitating the transfer of the School’s unused floor area; and

WHEREAS, under *Bella Vista Apartment Co. v. Bennett*, 89 N.Y.2d 465, 471 (1997) (“*Bella Vista*”), the Board “retain[s] the power of review over these kinds of proposals to preserve coherent land use determinations and adherence to the zoning plan itself”; and

WHEREAS, the applicant submits that this application is consistent with *Bella Vista* in light of the following factors:

1. the lapse of time between grant of the original variance and the application to amend;
2. whether the lots to be merged were under separate ownership when the variance was granted;
3. whether the redevelopment of the adjacent parcel was known to be anticipated when the original variance was granted so that the property owner should have foreseen the market for use of the variance site’s unused development rights;
4. whether the Board ascribed value to the unused development rights as part of its review of the financial analysis as to hardship;
5. whether amendment of a variance to facilitate a transfer of unused development rights undermines the integrity of the Board’s earlier findings; and
6. whether the transfer would involve any changes to the approved building associated with the proposed lot merger and transfer; and

WHEREAS, first, the applicant states that this application has been filed approximately ten years after the Board’s grant of a variance, indicating that the proposed zoning-lot merger was not part of the School’s long-term plan at the time of the original application; and

WHEREAS, second, the applicant states that the subject site and adjacent parcel have been maintained as separate, unrelated sites without common ownership or control, as reflected in the submitted ownership-history chart and associated deeds; and

WHEREAS, third, the applicant states that, at the time of the Board’s grant, the School could not have foreseen a

MINUTES

market for use of the subject site's unused floor area because the subject site and adjacent parcel have remained relatively unchanged, while the proposed zoning-lot merger instead reflects a then-unanticipated eventuality that has arisen as circumstances have changed; and

WHEREAS, fourth, the applicant states that, because the School is a non-profit institution, financial hardship was not relevant to the Board's grant, which instead considered the constraints that as-of-right development would pose to the School's programmatic needs separate from any financial rationale; and

WHEREAS, fifth, the applicant states that this application would not undermine any of the Board's findings because the School contemplated and affirmed—both during the original application and today—that its unused floor area was and is not necessary to enable the School's to meet its programmatic needs; and

WHEREAS, last, the applicant states that no changes to the School's building are proposed in this application; and

Whereas, at hearing, the Board requested and received confirmation that the School was aware that any future application to the Board for any increase in the maximum permitted floor area beyond that allowed by applicable zoning regulations would be considered a self-created hardship that would undermine the basis for the Board's grant; and

WHEREAS, based upon its review of the record, the Board has determined that the requested amendment is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated May 12, 2009, so that as amended this portion of the resolution shall read: "to *grant* an amendment to change the Board-approved site plan to permit the merger of the subject zoning lot with an adjacent parcel, thereby creating an entirely new zoning lot and facilitating the transfer of the School's unused floor area; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 26, 2019"—one (1) sheet; and *on further condition*:

THAT any future applications to the Board shall not allow for an increase in the maximum permitted floor area, which the Board would view as a self-created hardship;

That the following shall be the bulk parameters of the building: a 38'-3" street wall height on the northern 20'-0" of the subject site's frontage along Second Avenue, as illustrated on the Board-approved drawings;

That any change in the use, occupancy, or operator of the School requires review and approval by the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 316-08-BZ"), shall be obtained within four (4) years, by November 26, 2023;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 26, 2019.

335-59-BZ

APPLICANT – Robert Darden R.A., for FLS #1 Atlantic Avenue LLC, owner.

SUBJECT – Application June 7, 2019 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2019. R5 zoning district.

PREMISES AFFECTED – 3485-95 Atlantic Avenue & 315-321 Nichols Avenue, Block 4151, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for postponed hearing.

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for GTY-CPG (QNS/BX) Leasing, Inc, owner; Global Partners LP, lessee.

SUBJECT – Application February 21, 2019 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of a Automotive Service Station (UG 16B) (Mobil) which expired on November 26th 2015; Waiver of the Board's Rules.

PREMISES AFFECTED – 2090 Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

MINUTES

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 14, 2020, at 10 A.M., for continued hearing.

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2018-129-A

APPLICANT – Philip L. Rampulla, for Donna Marie Russo, owner.

SUBJECT – Application August 3, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District (Special Area “M”). PREMISES AFFECTED – 484F Sharrotts Road, Block 7328, Lot 323, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 25, 2018, acting on New Building Application No. 520351422, reads in pertinent

part:

“GCL 36, BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a building that does not front on a mapped street; and

WHEREAS, a public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 26, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the North side of Marjorie Street, south of the intersection of Sharrotts Road and Marjorie Street, in an M1-1 zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 50 feet of frontage along Marjorie Street, 110 feet of depth, 5,500 square feet of lot area and is vacant; and

WHEREAS, Sharrotts Road has an irregular width of approximately 60 feet at the subject site, which provides access to Marjorie Street, a right of way with 50 feet of width, and is accessible from Arthur Kill Road; and

WHEREAS, by correspondence dated January 29, 2019, the Office of the Borough President indicates that Sharrotts Road is paved to a width of 60 feet and is unmapped, but was issued a Corporation Counsel Opinion, dated January 17, 1984, as in-use for a width of 32 feet to 37 feet; and

WHEREAS, the applicant proposes to develop the site, in conjunction with adjoining tax lot 293 (484 Sharrotts Road), with a two-story commercial building fronting on Marjorie Street and with access from Sharrotts Road, which are not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the proposed structure on the site comply with all zoning regulations applicable in the underlying zoning district and will be constructed on an as-of-right basis; and

WHEREAS, by letter dated September 11, 2018, the New York City Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there is an existing 8-inch diameter private water main in Marjorie Street and 12-inch diameter water main in Sharrotts Road at

MINUTES

the above referenced location; Storm Water and Sanitary Drainage Management Plan for South Richmond, Clay Pit Ponds Park Watershed, Sheet 5 of 7, revised dated May 12, 2005, shows future 10-inch diameter sanitary and 15-inch diameter storm sewers in Sharrotts Road east of Arthur Kill Road; DEP requires the applicant to submit a copy of the certified Site/House Connection Proposal application, showing the method of disposing of sanitary and storm discharge from the proposed development, and approved internal water main plan showing connection to the City water main; in addition, it is necessary to submit a copy of the documents, reflecting merging of tax lots 363 & 293; the applicant must submit a copy of the final map of the City of New York, a letter from the Borough President Office for the status of the street and a copy of the Corporation Counsel Opinion (CCO); and, it is anticipated that the proposed sanitary and storm connections and available water service or internal water main connection will be maintained by the owners, and will not be maintained by the City of New York; and

WHEREAS, the applicant represents that a Builders Pavement Plan (“BPP”) proposing to maintain the paved width of Sharrotts Road and pave Marjorie Street to a width of 23 feet at the subject site with steel-faced curbs was filed for the respective approvals; and

WHEREAS, the applicant additionally states that the proposed development will not produce a negative impact to the surrounding area; and

WHEREAS, by letter dated September 5, 2018, the Fire Department, Bureau of Operations, states no objection to the subject application on condition that, as shown on Fire Department plan stamped “Approved for Fire Dept. Access and Hydrant Requirements subject to the letter of September 5, 2018,” the proposed addition must be fully sprinklered, all Siamese locations must have hydrant within 100 feet, the 30-foot access roadway from Sharrotts Road must be maintained clear at all times, the 25’-10” access roadway travelling west/east along the building frontage must have “NO PARKING ANYTIME” signs in accordance with the New York City Fire Code, Section 503.2.7.2.1, the 30’x30’ frontage space at the main front entrance must have diagonal striping and state “FIRE ZONE – NO STANDING,” and that it is understood that all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Codes must be complied with by the applicant; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated July 25, 2018, acting on New Building Application No. 520351422, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a building that does not front on a mapped street; *on condition* that all work and site conditions

shall conform to drawings filed with this application marked “Received November 6, 2019”-One (1) sheet and “November 26, 2019”- Two (2) sheets; and *on further condition:*

THAT the roadway sections abutting the subject site shall comply with the minimum standards of the New York City Department of Transportation;

THAT the proposed addition must be fully sprinklered;

THAT all Siamese locations must have hydrant within 100 feet;

THAT the 30-foot access roadway from Sharrotts Road must be maintained clear at all times;

THAT the 25’-10” access roadway travelling west/east along the building frontage must have “NO PARKING ANYTIME” signs in accordance with the New York City Fire Code, Section 503.2.7.2.1;

THAT the 30’x30’ frontage space at the main front entrance must have diagonal striping and state “FIRE ZONE – NO STANDING;

THAT a copy of the documents, reflecting merging of tax lots 363 & 293, and a copy of the certified Site/House Connection Proposal application, showing the method of disposing of sanitary and storm discharge from the proposed development, and approved internal water main plan showing connection to the City water main shall be submitted to the New York City Department of Environmental Protection for review of the adequacy of the septic system;

THAT the proposed sanitary and storm connections and available water service or internal water main connection will be maintained by the owners, and will not be maintained by the City of New York;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-129-A”), shall be obtained within four (4) years, by November 26, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

MINUTES

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, NA-1 zoning district.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2019-166-A

APPLICANT – Law Office of Steven Simicich, for Ancy Mathai, owner.

SUBJECT – Application June 4, 2019 – to permit the construction of a two-story single-family detached home not fronting on a mapped street contrary to General City Law §36. R1-2 & R1-1 Special Natural Area District.

PREMISES AFFECTED – 8 Madigan Place, Block 835, Lot(s) 161, 159, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

ZONING CALENDAR

43-11-BZ

CEQR #11-BSA-081K

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 12, 2011, acting on Department of Buildings Alteration Type I Application No. 320288602, reads in pertinent part:

“The proposed enlargement of the existing

residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with respect to one side yard and is contrary to sections 23-461 & 54-31 of the Zoning Resolution;
2. Creates non-compliance with respect to floor area and floor area ratio and is contrary to section 23-141 of the Zoning Resolution;
3. Creates non-compliance with respect to open space and lot coverage and is contrary to section 23-141 of the Zoning Resolution;
4. Creates non-compliance with respect to rear yard and is contrary to section 23-47 of the Zoning Resolution;” and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yards contrary to Z.R. §§ 23-142, 23-461, and 23-47; and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found at ZR § 23-141, setting forth the maximum floor area ratio, minimum required open space and maximum lot coverage permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus the Board treats the citation to ZR § 23-141 in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, with continued hearings on July 23, 2019, August 13, 2019, and November 26, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of two form letters in support of this application; and

WHEREAS, the subject site is located on the west side of East 21st street, between Avenue R and Avenue S, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 21st Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing three-story plus cellar single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*1 of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall

continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a three-story plus cellar single-family detached residence with 0.64 FAR (2,575 square feet of floor area), 56.3% of open space (2,254 square feet of open space), 43.7% of lot coverage (1,746 square feet of lot coverage, two side yards with widths of 3'-9-1/2" and 9'-2-3/4", and a rear yard with a depth of 49'-9-3/4"); and

WHEREAS, the applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 1.0 FAR (3,987 square feet of floor area), 56.3% of open space (2,254 square feet of open space), 43.7% of lot coverage (1,746 square feet of lot coverage), two side yards with widths of 3'-9-1/2" and 9'-2-3/4", and a rear yard with a depth of 24'-10"; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 65% of open space (2,600 square feet of open space) is required, a maximum of 35% lot coverage (1,400 square feet of lot coverage) is permitted, two side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-142, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,043 square feet to 1,735 square feet, the second floor from 950 square feet to 1,609 square feet, and the third floor from 582 square feet to 643 square feet; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

MINUTES

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 11BSA081K, dated April 4, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing three-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yards contrary to Z.R. §§ 23-142, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked Received “September 17, 2019”- thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.0 FAR (3,987 square feet of floor area), a minimum of 56.3% open space (2,254 square feet of open space), a maximum of 43.7% of lot coverage (1,746 square feet of lot coverage), two side yards with minimum widths of 3’-9-1/2” and 9’-2-3/4”, and a rear yard with a minimum depth of 24’-10”, as illustrated on the Board-approved plans;

THAT the applicant shall clarify all changes to approved plans, between corrective work due to a fire at the site and the originally approved DOB drawings, to DOB;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 43-11-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 7, 2024;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 26, 2019.

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

MINUTES

Adopted by the Board of Standards and Appeals,
November 26, 2019.

2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.

SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries. C4-4 zoning district.

PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals,
November 26, 2019.

2019-23-BZ

CEQR #19-BSA-081M

APPLICANT – Law Office of Fredrick A. Becker, for Karass Mulberry 290 LLC, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Martial Arts Family Studio) on portions of the cellar and first floor of an existing 11 story and cellar mixed use residential and commercial building contrary to ZR §32-10.

PREMISES AFFECTED – 290 Mulberry Street aka 41 East Houston Street, Block 590, Lot(s) 19 & 20, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 28, 2019, acting on Alteration Type I Application No. 121189392, reads in pertinent part:

“ZR 73-36: Proposed use of Physical Culture Establishment is not permitted per ZR 73-36. Approval from Board of Standards and Appeals is

required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an C6-3 zoning district and in the Special Little Italy District, the legalization of a physical culture establishment, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with continued hearings on November 26, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the Board was also in receipt of one form letter in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Mulberry Street, and East Houston Street, in an C6-3 zoning district and in the Special Little Italy District, in Manhattan; and

WHEREAS, the subject site has approximately 73 feet of frontage along Mulberry Street, 42 feet of frontage along East Houston Street, 2,978 square feet of lot area and is occupied by an existing 11-story plus cellar mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or

MINUTES

health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 1,903 square feet of floor area on the first floor used for reception, restrooms, study/quiet area and studio and 113 square feet of floor space in the cellar used for additional restrooms; and

WHEREAS, the PCE has been in operation since September 15, 2018, as “Martial Arts Family Studio”, with the following hours of operation: Monday to Friday, 9 a.m. to 9 p.m., and Saturday and Sunday, 10 a.m. to 3 p.m.; and

WHEREAS, the applicant represents that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area because it is consistent with the vibrant commercial area in which it is located, it is fully contained within the envelope of an existing building and the subject site has pedestrian access to rapid transit facilities within the vicinity; and

WHEREAS, in addition, the applicant submits that

sound attenuation measures, including suspended acoustic ceiling tiles, suspended gypsum board ceiling, one-inch thick rubber mat flooring and unfinished concrete slab, have been provided within the space to ensure that the operation of the PCE does not disturb other tenants in the building; and

WHEREAS, the Board finds that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides boxing-based classes, instruction and programs for physical improvement, body building, weight reduction, and martial arts; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory; and

WHEREAS, the applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated September 16, 2019, the Fire Department States that these premises are currently protected by approved automatic smoke/heat detection system with a sprinkler water flow switch and a combination (sprinkler and standpipe) water suppression system, which has been tested satisfactory according to Fire Department rules and regulation; based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, at hearing, the Board raised concerns regarding inconsistencies in the application as to the correct tax lot at the subject premises, the proper calculation of the floor area and gross square footage, and the number of people legally permitted in the PCE space; and

WHEREAS, in response to the Board’s comments at hearing, the applicant provided a revised application form, affidavit of ownership, sign analysis, CEQR application, revised plans which demonstrate the pathway in the cellar to the restrooms with proper square footage calculation, and revised zoning analysis to show the modification in floor space, including notation as to which space is deemed zoning floor area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not

MINUTES

interfere with any pending public improvement project; and
WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA081M, dated September 26, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated without a special permit.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 *to permit*, in an C6-3 zoning district and in the Special Little Italy District, the legalization of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 4, 2019”- (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring September 15, 2028;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-23-BZ”), shall be obtained within one year, by November 26, 2020;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

2019-163-BZ

CEQR #19-BSA-141M

APPLICANT – Law Office of Jay Goldstein, for EM Real Estate LLC, owner; Bar Nala NYC LLC, lessee.

SUBJECT – Application June 3, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bar Method) on the second floor of an existing building contrary to ZR 42-10. M1-5B Noho Historic District.

PREMISES AFFECTED – 678 Broadway, Block 530, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 2, 2019, acting on Alteration Application No. 123575078, reads in pertinent part:

“The proposed ‘physical culture or health establishment’ in a M1-5B zoning district is contrary to ZR 42-10. A special permit from the New York City Board of Standards and Appeals (BSA) is required per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5B zoning district and in the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of an existing five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 26, 2019 and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

MINUTES

WHEREAS, the subject site is located on the west side of Broadway, between West 3rd Street and Bond Street, within an M1-5B zoning district, in Manhattan; and

WHEREAS, the site has approximately 29 feet of frontage along Broadway, 130 feet of depth, 3,705 square feet of lot area and is occupied by an existing five-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2, or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 2,867 square feet of floor area on the second floor with areas for fitness, lockers, restrooms, reception and office space; and

WHEREAS, the PCE began operation in June 2019, as “Bar Method,” and is open daily from 5:30 a.m. to 9:30 p.m.; and

WHEREAS, the applicant states that, while the PCE will be located within a commercial building, the PCE space maintains measures to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces; these measures include studio partitions isolated from adjacent structures with two layers of sheetrock in studio and two layers outside with sound attenuated batt insulation; rolled neoprene noise control underlayment in the studio flooring; studio ceiling penetrations and partitions sealed with insulation and caulked and are protected by isolated hangers; and STC ratings at acoustical separation are as provided follows: partitions are STC 60, flooring are STC 64, ceilings are STC 69; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because is located within an entirely within an existing commercial building, in an area characterized by commercial office buildings, community facilities, retail stores, restaurants, and residential uses, and the PCE does not attract significant additional traffic to the area; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use

MINUTES

is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the area is already heavily trafficked by retail customers, most of the PCE patrons walk or use mass transit to access the PCE and the PCE does not increase traffic to the surrounding area; and

WHEREAS, the applicant represents that a sprinkler system nor approved fire alarm system are required within the PCE space; and

WHEREAS, by letter dated October 28, 2019, the Fire Department submitted a letter of no objection to this application; and

WHEREAS, by Certificate of No Effect (“CNE”) CNE-19-39347, issued May 7, 2019, the New York City Landmarks Preservation Commission permitted interior alterations at the second floor associated with this application, including the demolition and construction of nonbearing partitions and finishes, as well as plumbing work; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-141M, dated May 23, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated without a special permit.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5B zoning district, the operation of a proposed physical culture establishment on a portion of the second floor of an

existing five-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 29, 2019”- (5) sheets; and *on further condition:*

THAT the term of the PCE grant shall expire on June 1, 2029;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT minimum 3-foot-wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-163-BZ”), shall be obtained within one year, by November 26, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M. for adjourned hearing.

MINUTES

2018-59-BZ

APPLICANT – Akerman, LLP, for 3030 Equities, LLC, owner; Debrinator, LLC, lessee.

SUBJECT – Application April 25, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Powerhouse Gym*) on a portion of the ground floor of an existing commercial building contrary ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 3030 Northern Boulevard, Block 239, Lot 60, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2018-168-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Cohen, owner.

SUBJECT – Application October 22, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-141); open space and lot coverage (ZR § 23-142); rear yard (ZR § 23-47), and side yard regulations (§§ 23-47 & 23-461)). R3-2 zoning district.

PREMISES AFFECTED – 1769 East 26th Street, Block 6809, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2018-191-BZ

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 26, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

ZONING CALENDAR

2019-88-BZ

CEQR #19-BSA-129Q

APPLICANT – Akerman LLP, for Astoria 31st Street Developers LLC, owner; 92 Fitness Crew New York 4, LLC, lessee.

SUBJECT – Application May 6, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Orangetheory Fitness*) on a portion of the first floor of a seven-story mixed commercial and residential building contrary to ZR §32-10. C4-3 zoning district.

PREMISES AFFECTED – 31-57 31st Street, Block 613, Lot 7502, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 10, 2019, acting on DOB Alteration Type I Application No. 421951757, reads in pertinent part:

“The proposed physical culture establishment (gym) use is not permitted as-of-right in the C4-3 zoning district per ZR Section 32-10, and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR Section 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-3 zoning district, the legalization of a physical culture establishment, contrary to ZR §32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the Board was in receipt of two form

MINUTES

letters in support of this application; and

WHEREAS, the subject site is located on 31st Street, between Broadway and 31st Avenue, in a C4-3 zoning district, in Queens; and

WHEREAS, the subject site has approximately 325 feet of frontage along 31st Street, 80 feet of depth, 26,054 square feet of lot area, and is occupied by a seven-story plus cellar and sub-cellar mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation

which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 3,135 square feet of floor area on a portion of the first floor with a training studio, lobby/reception area, restrooms, shower room, and an office/storage/utility room; and

WHEREAS, the PCE has been in operation since January 19, 2019, as “Orangetheory Fitness”, with the following hours of operation: Monday through Thursday, 5 a.m. to 9 p.m., Friday, 5 a.m. to 8 p.m., Saturday, 7 a.m. to 1 p.m., and Sunday, 8 a.m. to 2 p.m.; and

WHEREAS, the applicant represents that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area because it is consistent with the vibrant commercial area in which it is located, it is fully contained within an existing building, and the subject site is well served by public transit; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including suspended ceiling and demising walls and 1 ¼-inch thick rubber floor tiles above ¼ inch thick rubber flooring, have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, the Board finds that the PCE use is so located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be

MINUTES

satisfactory; and

WHEREAS, the applicant submits that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated November 24, 2019, the Fire Department states that these premises are protected by a combination of suppression system (standpipe and sprinkler); a self-certification has been filed with the Department of Buildings for the new system; the base building new fire alarm installation has been inspected and signed-off, according to Department of Building records; based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA129Q, dated May 8, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated without a special permit.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 *to permit*, in a C4-3 zoning district, the legalization of a physical culture establishment, contrary to ZR §32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 4, 2019”- (4) sheets; and *on further condition*:

THAT the PCE shall maintain levels of noise and vibration so as not to disturb neighbors;

THAT this grant shall be limited to a term of ten years, expiring January 19, 2029;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall

be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-88-BZ”), shall be obtained within one year, by November 26, 2020;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

2019-27-BZ

APPLICANT – Klein Slowik, PLLC, for Congregation P’Nei Menachem, owner.

SUBJECT – Application February 5, 2019 – Variance (72-21) to permit the development of a house of worship (UG 4) (*Congregation P’nei Menachem*) contrary to ZR 24-35 (minimum required side yards) and ZR 25-31 (parking). R5 zoning district.

PREMISES AFFECTED – 4533 18th Avenue, Block 5439, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to March 3, 2020, at 10 A.M., for continued hearing.

MINUTES

2019-60-BZ

APPLICANT – Eric Palatnik, P.C., for WFBH LLC & 7 Fruits LLC, owner.

SUBJECT – Application March 20, 2019 – Special Permit (§73-50) to legalize a 1,566-square foot portion of an existing manufacturing/ warehouse building (Use Group 17) with accessory office space which encroaches into the required 15’ side yard that is required of lots within M1-1 zoning districts that coincide with a side lot line of a zoning lot located within an R4 zoning district contrary ZR §43-301. M1-1 Zoning District.

PREMISES AFFECTED – 132-02 89th Avenue, Block 9361, Lot 20, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to January 28, 2020, at 10 A.M., for continued hearing.

2019-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Porter Avenue Holdings LLC, owner; Blink 1134 Fulton, Inc., lessee.

SUBJECT – Application April 23, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) to be located within the first and cellar floors of a proposed cellar and ten-story mixed-use building contrary to ZR §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 1134 Fulton Street, Block 2017, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2019-159-BZ

APPLICANT – Akerman LLP, for The Dynasty Condominium Board of Managers, owner; Nova Fitness, Inc., lessee.

SUBJECT – Application May 24, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Nova Fitness*) to be located on the first, cellar and sub-cellar floors of a commercial and residential building contrary to ZR §32-10. C6-2A Tribeca East Historic District.

PREMISES AFFECTED – 249 Church Street, Block 174, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2019-167-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Gold Equities Corp., owner; Blink 2465 Jerome, Inc., lessee.

SUBJECT – Application June 7, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Blink Fitness*) within an existing four-story commercial building contrary to ZR §32-10. C2-4/R6 zoning district.

PREMISES AFFECTED – 2467 Jerome Avenue aka 2465 Jerome Avenue, 1 W Fordham Road, Block 3200, Lot 20, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83rd LLC, owner; The Renaissance Charter School 2, lessee.

SUBJECT – Application July 1, 2019 – Special Permit (§73-19) to permit a school (The Renaissance Charter School) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 45-20 83rd Street and 80-52 47th Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 4, 2020, at 10 A.M., for continued hearing.

2019-194-BZ

APPLICANT – Terminus Group, LLC, for Theodora Friscia, owner.

SUBJECT – Application July 19, 2019 – Variance (§72-21) to permit the construction of a single-family detached home contrary to ZR 23-461 (side yards). R3-1 zoning district.

PREMISES AFFECTED – 50 Titus Avenue, Block 4033, Lot 94, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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December 20, 2019

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|-------------------------------------|---------|
| DOCKET | 902 |
| CALENDAR of January 14, 2020 | |
| Morning | 903 |
| Afternoon | 903/904 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, December 10, 2019**

Morning Calendar905

Affecting Calendar Numbers:

| | |
|--------------|---|
| 1715-61-BZ | 129-02 Guy Brewer Boulevard, Queens |
| 171-93-BZ | 32-45 75 th Street, Queens |
| 67-13-A | 945 Zerega Avenue, Bronx |
| 863-48-BZ | 259-16 Union Turnpike, Queens |
| 764-56-BZ | 200-05 Horace Harding Expressway, Queens |
| 751-78-BZ | 200-15 Northern Boulevard, Queens |
| 64-14-BZ | 1320 East 23 rd Street, Brooklyn |
| 2017-207-BZ | 2030 Broadway, Manhattan |
| 2019-270-BZY | 12-14 East 48 th Street, Manhattan |
| 2017-310-A | 10002 Farragut Road, Brooklyn |
| 2018-198-A | 85 Trenton Court, Staten Island |
| 2019-40-BZ | 175-179 East 73 rd Street, Manhattan |
| 2019-157-BZ | 88-02 Northern Boulevard, Queens |
| 2018-167-BZ | 1133 East 22 nd Street, Brooklyn |
| 2019-6-BZ | 138 East 39 th Street, Manhattan |
| 2019-29-BZ | 30 Clinton Avenue, Brooklyn |
| 2019-158-BZ | 89-03 57 th Avenue, Queens |

Afternoon Calendar923

Affecting Calendar Numbers:

| | |
|--------------|--|
| 2019-156-BZ | 257-09 Union Turnpike, Queens |
| 2016-4149-BZ | 500-508 Van Nest Avenue, Bronx |
| 2016-4264-BZ | 194 Moffat Street, Brooklyn |
| 2018-192-BZ | 229 Lenox Avenue, Manhattan |
| 2019-48-BZ | 31-45 41 st Street, Queens |
| 2019-64-BZ | 1334 East 24 th Street, Brooklyn |
| 2019-193-BZ | 218-222 Second Avenue (aka) 311-315 East 13 th Street), 310 East 14 th Street (a/k/a 302 East 14 th Street, a/k/a 302-318 East 14 th Street/224-26 Second Avenue, 300 East 14 th Street, 326 East 14 th Street & 313 East 13 th Street (a/k/a 313-327 East 13 th Street, Manhattan |
| 2-10-BZ | 218-222 Second Avenue (aka) 311-315 East 13 th Street), 310 East 14 th Street (a/k/a 302 East 14 th Street, a/k/a 302-318 East 14 th Street/224-26 Second Avenue, 300 East 14 th Street, 326 East 14 th Street & 313 East 13 th Street (a/k/a 313-327 East 13 th Street, Manhattan |

Corrected Calendar927

Affecting Calendar Numbers:

| | |
|----------|---------------------------------------|
| 81-74-BZ | 97-27 57 th Avenue, Queens |
|----------|---------------------------------------|

DOCKETS

New Case Filed Up to December 10, 2019

2019-298-BZ

506 West 181st Street, Block 2152, Lot(s) 0072, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Washington Heights and Inwood Music Community Charter School) contrary to ZR §32-10. C8-3 zoning district. C8-3, R7-2 district.

2019-299-BZ

82-01 to 82-13 Queens Boulevard, Block 1542, Lot(s) 0001, Borough of **Queens, Community Board: 4**. Re-instatement (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on December 13, 1987; Amendment to permit the conversion of automotive repair bays to accessory convenience store; Waiver of the Board's Rules. C2-3/R6 zoning district. C2-3 in R6 district.

2019-300-BZY

2338 2nd Avenue, Block 1796, Lot(s) 0051, Borough of **Manhattan, Community Board: 11**. Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from November 20, 2019. R9A/C2-5 district.

2019-301-BZ

148 26th Street, Block 00657, Lot(s) 0012, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (CrossFit 718) contrary to ZR §41-10. M1-2D zoning district. M1-2D district.

2019-302-BZ

67-71 Smith Street, Block 00170, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Rowhouse) located on a portion of the first floor of an existing 20-story and cellar mixed commercial, hotel and residential building contrary to ZR §32-10. C6-1 zoning district. C6-2A(DB) district.

2019-303-A

55 Eckford Street, Block 2698, Lot(s) 0032, Borough of **Brooklyn, Community Board: 1**. Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations. M1-2/R6B R6A and MX-8 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JANUARY 14, 2020, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 14, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

115-94-BZ

APPLICANT – Sheldon Lobel, P.C., for Irma Poretzky, owner.
SUBJECT – Application January 14, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 30, 2016; Waiver of the Rules. R6A zoning district.
PREMISES AFFECTED – 2470-2480 Bedford Avenue, Block 5167, Lot 40, Borough of Brooklyn.
COMMUNITY BOARD #14BK

42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.
SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.
PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.
COMMUNITY BOARD #3Q

160-98-BZ

APPLICANT – Sameh El-Meniawy (Land Planning), for 5770 Hylan LLC, owner.
SUBJECT – Application June 25, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a bank (UG 6) contrary to underlying use regulations which expires on June 8, 2019. R3X zoning district.
PREMISES AFFECTED – 5770 Hylan Boulevard, Block 6699, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #3SI

23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.
SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.
PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.
COMMUNITY BOARD #8Q

196-15-BZ

APPLICANT – Eric Palatnik, P.C., for Mercer Sq. LLC, owner; Gab & Aud, Inc., lessee.
SUBJECT – Application August 24, 2015 – Special Permit §73-36: to permit a physical culture establishment (*Haven Spa*) that will occupy the first floor of a 16-story residential building. C6-2 zoning district.
PREMISES AFFECTED – 250 Mercer Street aka 683 Broadway, Block 535, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #1M

2018-18-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Garichi LLC, owner.
SUBJECT – Application December 9, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approve re-instatement permitting retail use contrary to underlying use regulations which expired on December 11, 2019. R5 zoning district.
PREMISES AFFECTED – 2228-2250 Linden Boulevard, Block 4359, Lot(s) 1, 6, Borough of Brooklyn.
COMMUNITY BOARD #5BK

APPEALS CALENDAR

2018-170-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Van Dam Specialty & Promotion Inc., owner; Clear Channel Outdoor, Inc., lessee.
SUBJECT – Application October 30, 2018 – Appeal of a NYC Department of Buildings determination that a sign does not comply with the provisions of ZR §42-55c.
PREMISES AFFECTED – 51-03 Van Dam Street, Block 305, Lot 17, Borough of Queens.
COMMUNITY BOARD #2Q

CALENDAR

2019-259-BZY

APPLICANT – Kenneth K. Lowenstein, for SLC2 Holdings, LLC, owner; Pestana New York East Side 39 LLC, lessee.

SUBJECT – Application September 9, 2019 – (§11-332) to a building permit issued for, and extend the time to complete construction of, a twenty-seven-story hotel building. C5-3 zoning district.

PREMISES AFFECTED – 23 East 39th Street, Block 869, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

**REGULAR MEETING
JANUARY 14, 2020, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 14, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2018-91-BZ

APPLICANT – Klein Slowik PLLC, for LW Retail Associates, owner.

SUBJECT – Application May 17, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street a/k/a 79 Worth Street, Block 173, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

2019-74-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP by Michael T. Sillerman, for Eastern Emerald Group LLC, owner.

SUBJECT – Application April 11, 2019 – Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-4/R6 zoning district.

PREMISES AFFECTED – 112-51 Northern Boulevard, Block 1707, Lot 8, Borough of Queens.

COMMUNITY BOARD #3Q

2019-169-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for AC Design Property & Equipment Corp., owner; Rock’Em Extreme, lessee.

SUBJECT – Application June 10, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Rock’Em Extreme) within an existing mixed commercial and manufacturing building contrary to ZR §42-10. M1-1 Special South Richmond District.

PREMISES AFFECTED – 638 Sharrotts Road, Block 7400, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

2019-170-BZ

APPLICANT – Sheldon Lobel, P.C., for United Prime Broadway, LLC, owner; High Court Downtown, LLC, lessee.

SUBJECT – Application June 10, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*High Court*) on the second and third floors of an existing building contrary to ZR §32-10. C6-2A Tribeca East Historic District.

PREMISES AFFECTED – 385 Broadway, Block 193, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #1M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 10, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

1715-61-BZ

APPLICANT – Michael H. Choi, Esq., for Kun Kwon Kim and Won Kil Kim, owners.

SUBJECT – Application April 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a dry-cleaning establishment (UG 6A) which expired on June 5, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on September 14, 2011; Waiver of the Board’s Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy Brewer Boulevard, Block 12276, Lot 59, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board, that expired on June 5, 2017 and an extension of time to obtain a certificate of occupancy, which expired on September 14, 2011; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on December 10, 2019; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 129th Avenue, in an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 31 feet of frontage along Guy R Brewer Boulevard and approximately 104 feet of frontage along 129th Avenue, 2,976 square feet of lot area, and is occupied by an existing one-story dry-cleaning establishment with parking; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 5, 1962, when, under the subject calendar number, the Board granted a variance to permit the change in use of an existing one-story five-car garage to

retail stores in a residence use district, for a term of 25 years, expiring on June 5, 1987, on condition that the work conform with drawings filed with the application; the stores not be used at any time for the sale of alcoholic beverages; all laws, rules and regulations applicable be complied with; signs be restricted to those permitted in a retail district; and permits be obtained, work completed and a certificate of occupancy obtained within one year; and

WHEREAS, on July 16, 1963, under the subject calendar number, the Board amended the resolution to extend the time to obtain permits and complete the work for one year, by July 16, 1964, on condition that a certificate of occupancy be obtained; and

WHEREAS, on November 15, 1988, under the subject calendar number, the Board waived its Rules of Procedure and amended the resolution to legalize the change from two retail stores to one retail store and to change the front façade of the building for a term of ten years, to expire on June 5, 1997, on condition that the change conforms substantially as shown on revised drawings of existing and proposed conditions; other than as amended, the resolution above cited be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 15, 1989; and

WHEREAS, on December 14, 1999, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to permit an extension of term of the variance, to expire on June 5, 2007, on condition that the premises remain graffiti free at all times; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by December 4, 2000; and

WHEREAS, on December 8, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten years, to expire on June 5, 2017, and to permit an extension of time to obtain a certificate of occupancy, to expire on June 8, 2010, on condition that any and all work substantially conform to drawings as they apply to the objections noted in the resolution, filed with the application; signage comply with C1 district regulations; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; and the Department of Buildings ensure compliance with all other applicable provisions of the other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on September 14, 2010, under the subject calendar number, the Board further amended the resolution to permit an extension of time to obtain a certificate of occupancy, to expire on September 14, 2011, on condition

MINUTES

that the use and operation of the site substantially conform to the previously approved plans; a new certificate of occupancy be obtained by September 14, 2011; all conditions from prior resolutions not specifically waived by the Board, remain in effect; the approval is limited to the relief granted by the Board to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction, irrespective of plans(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term having expired June 5, 2017, and the time to obtain a certificate of occupancy having expired on September 14, 2011, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than one year after the expiration of term and the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, a waiver of § 1-07.3(b)(2) requires the applicant demonstrate that the use has been continuous since expiration of the term, and substantial prejudice would occur without such a waiver; and

WHEREAS, the applicant states that there has been continuous use of the site as a dry-cleaning establishment since the expiration of the term, and the owners would experience substantial prejudice without such a waiver; and

WHEREAS, the applicant provided W-2s to cover the period of June 2017 to through the filing of the application and states that substantial prejudice would befall the owners, as they rely entirely on the store for their livelihood; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten years each; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the legality of fans exhausting onto the sidewalk and the location of the fence off the property line; and

WHEREAS, the Board takes no position as to the legality of the fans, shown on the drawings as exhausting on to the sidewalk; and

WHEREAS, in response, the applicant provided revised plans and photographs demonstrating that the fence was removed; and

WHEREAS, by letter dated September 19, 2019, the Fire Department states that a review of its records indicates that the site is current with their Fire Department permits with respect to its air conditioning unit and one 550-gallon underground tank; based on the foregoing the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and

enforce all applicable rules and regulations; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, dated June 5, 1962, as amended through December 8, 2009, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten years, expiring December 10, 2029, and an extension of time to obtain a certificate of occupancy, to December 10, 2020; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 4, 2019"- (2) sheets; and *on further condition*:

THAT the premises shall remain free of graffiti at all times;

THAT the stores shall not be used at any time for the sale of alcoholic beverages;

THAT signage shall comply with C1 district regulations;

THAT the Board of Standards and Appeals takes no position on the legality of the fans shown on the approved plans as exhausting to the sidewalk;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 1715-61-BZ"), shall be obtained within one year, December 10, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 10, 2019.

MINUTES

171-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Lacher/Koeppel Realty Corp., owner.

SUBJECT – Application November 6, 2017 – Extension of Term of a previously approved (§72-21) which permitted the legalization of an existing auto storage facility and the parking of twenty-four (24) cars on the vacant portion of the site which expired on November 22, 2014; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 32-45 75th Street, Block 1171, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension to the term of a variance, previously granted by the Board pursuant to ZR § 72-21, which legalized the operation of an existing auto storage facility (Use Group (“UG”) 16) and the parking of 24 cars on the vacant portion of the site, and expired on November 22, 2014; and

WHEREAS, a public hearing was held on this application on June 25, 2019, after due notice by publication in *The City Record*, with continued hearings on September 17, 2019, and December 10, 2019, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that the applicant ensure that all vehicles are stored on the property at all times and not on the public sidewalks and streets; and

WHEREAS, the Board was also in receipt of a letter in opposition to the subject application from a City Council member, raising concerns regarding the applicant’s compliance with conditions of prior Board approvals; and

WHEREAS, the subject site is located on the east side of 75th Street, between 32nd Avenue and Northern Boulevard, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 325 feet of frontage along 75th Street, 100 feet of depth along its northerly lot line and 109 feet of depth along its southerly lot line, 33,138 square feet of lot area and is occupied by an existing one-story commercial building with parking spaces for 104 cars and 24 off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 30, 1952, when, under BSA Cal. No. 32-52-BZ, the Board granted a variance to permit

the extension of the existing use established when the premises were in an unrestricted district, so as to permit the parking and storage of patrons’ cars being serviced on the additional lot to the north, as proposed and as indicated on plans filed with the application and revised plan showing the plot in relation to the adjoining garages and driveway for houses erected on 76th Street on condition that the total area then used and proposed to be used not exceed a total frontage along 75th Street of approximately 325 feet; the additional premises to be occupied for parking to the north be used for no other use than as proposed for the storage of cars waiting to be serviced and the parking of patrons’ cars; no additional curb cuts be constructed; the entrance and exit be solely by means of the existing curb cuts for which permits be obtained; the existing woven wire fence approximately six feet in height be continued on the interior lot lines to the east and north and on the street line to the west, as proposed and indicated on such plans; sidewalks and curbing around the premises be repaired and maintained to the satisfaction of the Borough President; the additional parking space be leveled substantially to the grade of 75th Street and surfaced with clean gravel, steam cinders and treated with a binder; any signs erected on the premises be as permitted within the portion of the property then in use; and, all permits required be obtained and all work completed within six months, by March 30, 1953; and

WHEREAS, on December 16, 1958, under BSA Cal. No. 32-52-BZ, the Board amended the variance to permit the construction of a building for a bowling alley and to provide space for the parking of cars substantially as proposed and as shown on plans filed with the application, on condition that the proposed building be constructed northerly to the lot line in the parking area located against the southerly lot line; the equipment of the alleys, and other bowling equipment, be of a type that is as noiseless as possible; the toilet rooms be vented through the roof and not by windows, as shown; the exit doors indicated may be permitted to the rear yard as proposed provided to such doors are not used except for exit purposes and are kept closed; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; such fire fighting appliances be maintained as the Fire Commissioner requires; the parking lot toward the south, as relocated, be surfaced with clean gravel or steam cinders and treated with a binder and properly rolled and be enclosed with a woven wire fence of the chain link type on a masonry base not less than 5’-6” in total height; the rear yard be maintained across the property for its full length; entrance to the parking lot consist of one opening in the fence and be fitted with gates and be normally kept closed when the bowling alley building is not in operation, and with a curb cut opposite not over 14 feet in width; the sidewalks and curbing abutting the premises be constructed or repaired to the satisfaction of the Borough President; along the rear yard where existing fences do not occur on the building line there be erected a similar woven wire fence of the height as specified; signs be restricted to signs as would be permitted

MINUTES

if the lot were in a local retail district; and, all permits be obtained and all work completed within one year, by December 16, 1959; and

WHEREAS, on May 26, 1959, under BSA Cal. No. 32-52-BZ, the Board further amended the resolution such that the size of the building which has been shown as 262 feet long maybe changed to 260 feet in length, which in change increases the excess area of the lot; and, in all other respects the resolution be complied with, except all permits and a certificate of occupancy be obtained in all work completed within one year, by May 26, 1960; and

WHEREAS, on November 22, 1994, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the legalization of an existing auto storage facility (UG 16) and the parking of 24 cars on the vacant portion of the site, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the sidewalk fronting on 75th Street be repaired in accordance with the BSA-approved plans; fencing and landscaping be maintained in accordance with BSA-approved plans; the premise be maintained graffiti-free; the term of the variance be limited to 20 years, to expire on November 22, 2014; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four years, by November 22, 1998; and

WHEREAS, on November 18, 2003, under BSA Cal. No. 232-03-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the proposed additional storage of vehicles on the roof of an existing automotive storage facility (UG 16c), located in an R4 zoning district, which is contrary to BSA Cal. No. 171-93-BZ, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the premises comply with all applicable fire safety measures; substantial construction be completed within four years, by November 18, 2007; the conditions be noted in the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than two years after the expiration of term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules

of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(b)(3)(ii), of the Board’s Rules to permit the filing of this application; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of term of a variance; and

WHEREAS, the applicant represents that the facility now accommodates approximately 104 parking spaces for vehicles, rather than the 134 parking spaces that were permitted under the previous grant; the owner continues to maintain the 24 open parking spaces in front of the building; and the applicant proposes to plant five new street trees, in excess of the previously required three street trees; and

WHEREAS, in response to Board and community concern, the operator has adopted an operational plan in order to prevent cars from parking on the sidewalk, providing a service manager and parts director with access to CCTV cameras that provide surveillance for the block; anyone with access to the cameras will monitor sidewalk conditions for approximately every 30 minutes; the applicant, the service manager, and the parts director all have access to the cameras from their phones; the applicant will periodically send memoranda to the employees reminding them that cars cannot park on the sidewalk and for them to take proactive steps if they see anyone trying to park on the sidewalk; and, the applicant will employ approximately six porters who will monitor the sidewalk; and

WHEREAS, by letter dated June 21, 2019, the Fire Department objected to the application due to the building lacking a fire suppression system; parking stackers had been installed and storage rooms constructed contrary to the previously approved BSA plans; a review of DOB records shows that no applications have been filed or permitted; the use of the premises is considered as “High-Piled Combustible Storage” as defined in Chapter 23 of the 2014 NYC Fire Code; the NYC Fire Code also defines the space as high hazard and as per Table 2306.2 of the 2014 NYC Fire Code, high-piled storage areas of 2,501 square feet to 300,000 square feet, requires an automatic fire extinguishing system (see Fire Code 2306.4), building access (see Fire Code 2306.6) and smoke and heat removal (see Fire Code 2306.7); in addition, the Fire Department requested that the Board direct the applicant to file with the Fire Department, Technical Management Unit, plans and an application for plan review of the parking stackers; these premises may be required to provide additional fire protection systems not stated above; and, requests that the Board not issue a decision on the application until applications have been filed with the DOB and Fire Department for the required work as stated; and

WHEREAS, by letter dated November 30, 2019, the Fire Department withdrew its objection to the subject application and requirement to file an application for the installation of a new sprinkler system for the parking stackers, noting that a site inspection confirms that the parking stackers have been removed; and

MINUTES

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amends* the resolution, dated , so that as amended this portion of the resolution shall read: “to *permit* an extension to the term for 20 years, to expire on November 22, 2034, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received December 10, 2010”-Four (4) sheets; and *on further condition*:

THAT fencing and landscaping and sidewalks shall be maintained in first rate condition;

THAT the building shall be maintained graffiti free and evenly painted;

THAT there shall be no parking on the sidewalk at any time;

THAT no parking on the sidewalk shall be maintained as detailed in operational plan:

a service manager and parts director shall have access to CCTV cameras that provide surveillance for the block; anyone with access to the cameras shall monitor sidewalk conditions for approximately every 30 minutes; the applicant, the service manager, and the parts director shall all have access to the cameras from their phones; the applicant shall periodically send memoranda to the employees reminding them that cars cannot park on the sidewalk and for them to take proactive steps if they see anyone trying to park on the sidewalk; and, the applicant shall employ approximately six porters who will monitor the sidewalk;

THAT street trees shall be installed and maintained with according approvals;

THAT signage comply with C1 zoning regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 171-93-BZ”) shall be obtained within one year, by December 10, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 10, 2019.

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Appeal denied.

THE VOTE –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

THE RESOLUTION –

WHEREAS, this is an application to reopen and rehear a previously decided appeal to consider substantial new evidence not available at the time of the initial hearing pursuant to § 1-12.5 of the Board’s Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the site is located on the southwest corner of Zerega Avenue and Bruckner Boulevard, in an M1-1 zoning district, in the Bronx; and

BACKGROUND

A. Procedural History

WHEREAS, the site is occupied by a five-story commercial building with a rooftop sign structure containing a rooftop sign (the “Zerega Sign”) within 200 feet of an arterial highway; and

WHEREAS, on March 27, 2008, the Department of Buildings (“DOB”) issued Permit No. 210039224 for the repair of the structural elements of the Sign and on April 21, 2008, DOB issued Permit No. 201143253 for the repair of the Sign itself, however, on January 31, 2013, DOB revoked the Permits based on its determination that the Sign was not established as a non-conforming advertising sign; and

WHEREAS, on September 13, 2013, under the subject calendar number, the Board upheld DOB’s determination that the then-Appellant, the lessee of the sign, failed to provide evidence of the establishment of an advertising sign and denied the appeal, finding that DOB properly denied the Sign registration because the sign lessee has not met its burden of demonstrating that the Sign was established prior to November 1, 1979; and

WHEREAS, specifically, the Board agreed with DOB that nothing in a June 12, 1978 lease between Joma

MINUTES

Manufacturing Company (of the Premises) and the advertising company provided a basis for the Board to determine when the Sign was actually constructed; the 1978 lease speaks to, at most, when the Sign could have been constructed; that the only other item of evidence that is somewhat contemporaneous with the 1978 lease is a July 15, 1980 Work Completion Notice, which suggests that the Sign construction was completed more than eight months after November 1, 1979, the required date of establishment in ZR § 42-55; and

WHEREAS, on September 16, 2014, under the subject calendar number, the Board reopened the record by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board's decision in BSA Cal. No. 96-12-A (the "12th Avenue case"), and, again, denied the appeal finding that, unlike the appellant in the 12th Avenue case, the Appellant in the subject case did not submit a reconsideration or any similar document, which is viewed to be among the most valuable forms of evidence DOB accepts pursuant to TPPN 14/1988, and, because the Board found that the Sign was never established as non-conforming, it was unnecessary to determine whether the Zoning Resolution permitted its removal and reconstruction or whether the presumption of continuity impels the Board to find, based on the Appellant's evidence, that the Sign was not discontinued; and

WHEREAS, on July 12, 2016, under the subject calendar number, the Board, again, reopened the record by court remand for supplemental review and found that, while the Zerega Sign may have continuously existed at the premises since its establishment prior to November 1, 1979, in light of a lease by Philip Morris to utilize the 1,585 square feet of floor area it rented on the ground floor of the Premises for any number of business operations, including the storage and distribution of tobacco products, even if the Sign was established as an advertising sign prior November 1, 1979, its advertising use was abandoned even if the Zerega Sign was established as an advertising sign prior November 1, 1979, its advertising use was abandoned and the Zerega Sign has not continuously been used for advertising purposes since its establishment prior to November 1, 1979; and

WHEREAS, on July 12, 2016, under the subject calendar number, the Board denied this appeal, which had returned to the Board pursuant to an Order of the Supreme Court of New York, New York County (the "Court"), filed in OTR Media Group, Inc. v. Board of Standards and Appeals of the City of New York (Index No. 101422/2013) on May 6, 2015, annulling the Board's decision, dated September 16, 2014, and remanding the matter for a determination by the Board that a sign at the subject premises has (1) continuously existed at the premises since its establishment prior to November 1, 1979, and (2) has continuously been used for advertising purposes (the "2016 Resolution"); and

WHEREAS, the application was originally filed on

February 12, 2013, challenging DOB's revocation of two permits (Permit Nos. 210039224 and 201143253) based on DOB's determination that the Sign had not been established as a legal non-conforming advertising sign; and

WHEREAS, by decision dated September 24, 2013, the Board denied the appeal, concluding that the Appellant had failed to meet its burden of demonstrating that the Sign was established prior to November 1, 1979, the relevant date for legal nonconforming status, pursuant to ZR § 42-55; and

WHEREAS, the application was remanded to the Board pursuant to stipulation for the limited purpose of considering whether to distinguish the subject appeal from a prior appeal for signs located at 2284 12th Avenue (BSA Cal. Nos. 96-12-A and 97-12-A); and

WHEREAS, the Board subsequently held a public hearing and voted to add three additional recitals to the resolution dated September 24, 2013, distinguishing the subject case from the facts of 2284 12th Avenue, but otherwise, maintained its decision to deny of the appeal; and

WHEREAS, on April 15, 2015, the Supreme Court annulled that revised determination and remanded the matter to the Board for determinations on whether the Sign was used continuously at the subject site since being legally established prior to November 1, 1979, and whether the Sign had continuously been used for advertising purposes; and

WHEREAS, in accordance with the Court's order, the Board held five public hearings on the second remand and, in the 2016 Resolution, concluded that, though the Sign had continuously existed at the premises since its establishment prior to November 1, 1979, it had not continuously been used for advertising purposes; and

WHEREAS, the 2016 Resolution was challenged pursuant to Article 78 of the New York Civil Practice Law and Rules, annulled and the matter was again remanded, pursuant to an Order of the Court, filed in OTR Media Group, Inc. v. Board of Standards and Appeals of the City of New York (Index No. 158646/2016) on March 16, 2018, to the Board for further consideration in light of the Board's decision in 2368 12th Avenue, Manhattan (Block 2005, Lot 32) (BSA Cal. No. 24-12-A) (the "2018 Remand"); and

WHEREAS, an application to reconsider the application pursuant to the 2018 Remand was filed with the Board on or around June 7, 2018; and

WHEREAS, an application for a request to rehear, pursuant to the Board's Rules of Practice and Procedures § 1-12.5, was filed on or around June 8, 2018; and

WHEREAS, the 2018 Remand was restored to the Board's public hearing calendar and heard on the same dates as the application to request a rehearing; and

WHEREAS, on March 19, 2019, the Board granted the request for a rehearing to consider substantial new evidence not available at the time of the initial hearing pursuant to § 1-12.5 of the Board's Rules of Practice and Procedure, finding that the five New York State Department of Transportation photographs (the "NYSDOT photos") submitted by DOB constitute substantial new evidence that was not in DOB's possession prior to the 2016 Resolution

MINUTES

and constitute the only clear photographs of the subject site prior to 2005 and refute evidence previously proffered into the record on this appeal; and

B. History of Sign Regulations

WHEREAS, since 1940, the City of New York has prohibited off-site advertising signs within 200 feet and within view of its parks and arterial highways, *see Infinity Outdoor, Inc. v. City of New York*, 165 F. Supp. 2d 403, 406 (E.D.N.Y. 2001); and

WHEREAS, despite this prohibition and undeterred by the City's limited enforcement efforts, outdoor-advertising companies erected illegal arterial advertising signs between 1940 and 1979 in violation of the Zoning Resolution, *see Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99 (2d Cir. 2010); and

WHEREAS, however, in 1979, facing an impending loss of millions of dollars in federal funding, the City amended the Zoning Resolution to grant "legal non-conforming use" status¹ to existing illegal arterial advertising signs in order to comply with the federal Highway Beautification Act, *see Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99 (2d Cir. 2010); and

WHEREAS, in 2001, recognizing that "the outdoor advertising industry unquestionably employed creative methods to obtain building permits for arterial highway signs," the City created a sign-registration program for outdoor-advertising companies to increase oversight and improve enforcement of the Zoning Resolution's sign regulations, *Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99–100 (2d Cir. 2010); and

C. Legalization of Illegal Construction

WHEREAS, for more than a century, the City has regulated the construction of buildings and structures—including billboards—through its building code (the "Building Code"), *see People ex rel. Van Beuren & New York Bill Posting Co. v. Miller*, 161 A.D. 138, 139 (N.Y. App. Div. 1914); and

WHEREAS, a central feature of the Building Code's regulatory scheme is that, before erecting a structure, a permit to do so must be obtained from DOB, *see People ex rel. Van Beuren & New York Bill Posting Co. v. Miller*, 161 A.D. 138, 140 (N.Y. App. Div. 1914); and

WHEREAS, this permit application process generally requires plans and specifications demonstrating compliance with applicable laws, including the Zoning Resolution, to be submitted for review and approval by DOB; and

WHEREAS, if the permit application and DOB's review indicate the proposed construction complies with applicable laws, a permit will issue; and

WHEREAS, in the ordinary course, construction then proceeds as authorized by this permit, and the construction is then "signed off" as compliant with the plans and specifications; and

WHEREAS, notwithstanding this general framework, individuals sometimes violate the Building Code by performing illegal construction without a permit; and

WHEREAS, the Building Code provides that maintaining illegal construction is a continuing violation until the violation is cured; and

WHEREAS, after this occurs, the individual may opt to cure the violation by either removing or "legalizing" this illegal construction; and

WHEREAS, "legalizing" illegal construction—a term of art—involves procuring a permit for the already-built construction; and

WHEREAS, as such, a "legalization" application requires "as-built" plans and specifications demonstrating compliance of the illegal construction with applicable laws, including the Zoning Resolution, to be submitted for review and approval by DOB; and

WHEREAS, if the "legalization" application and DOB's review indicate the "as-built" illegal construction complies with applicable laws, the "legalization" application will be approved, a permit may issue, and the "as-built" illegal construction may be "signed off" as compliant with the plans and specifications; and

WHEREAS, if the "legalization" application or DOB's review do not indicate the "as-built" illegal construction complies, the "legalization" application cannot be approved; and

WHEREAS, because of the 1979 amendment to Zoning Resolution, many previously illegal arterial advertising signs that had been erected without proper permits underwent this "legalization" process, which DOB later codified in OPPN 10/99, setting forth filing standards for which types of applications to file for different billboard typologies (depending, for instance, on whether electrical work had been involved to illuminate the sign); and

WHEREAS, as discussed throughout this appeal, in the 1980s, many outdoor-advertising companies availed themselves of the opportunity to "legalize" their signs where their construction complied with applicable laws, including the Zoning Resolution, as amended in 1979; and

WHEREAS, however, not all arterial advertising signs could be legalized; and

WHEREAS, for instance, where an applicant cannot furnish evidence that an arterial-advertising sign existed as of the specified date, DOB denies an application to legalize an arterial-advertising sign as "legal non-conforming use"—a process that involves considering and weighing evidence, specified as having different weights of credibility in TPPN 14/1988; and

WHEREAS, the denied applicant then faces two choices: removing the illegal sign structure or salvaging the illegal sign structure by converting it to lawful use as an accessory business sign; and

¹ Generally, the Zoning Resolution requires that a nonconforming use be "lawful" before a zoning change with which the use no longer complies, *see ZR § 12-10* (nonconformity definition); however, the 1979 text amendment conferred "legal non-conforming use" status on then-illegal off-site advertising signs, *see ZR § 42-55*.

MINUTES

WHEREAS, the latter approach requires filing an application to “legalize” the newly converted accessory business sign structure with DOB to ensure compliance with applicable laws, including the Building Code (to review the safety of the illegal sign structure with construction standards) and the Zoning Resolution; and

WHEREAS, however, not all sign structures for newly converted accessory business sign structures can be legalized; and

WHEREAS, for instance, where an applicant cannot demonstrate that a business sign meets the Zoning Resolution’s “accessory use” definition, DOB denies the legalization application for failure to comply with applicable laws; and

WHEREAS, accordingly, this “legalization” process reflects an intricate interplay between the technical and procedural aspects of the City’s regulation of construction that requires a significant depth of expertise to administer; and

PARTIES’ POSITIONS

DOB’s Position

WHEREAS, DOB argues that TPPN 14/1988 identifies “records or documentation from any City Agency,” as the first category in order of preference of evidence to demonstrate the existence of a sign; and

WHEREAS, while other governmental records are not listed within the TPPN, both the Department and the Court that remanded this matter to the Board in 2015 recognized that the examples cited in the TPPN are intended as “guidelines” and “examples” and not meant to be a complete and exhaustive list; and

WHEREAS, to the extent New York State maintained in its normal course of business photographic records of signs along the highway, such records are at least as strong as any City Agency record; and

WHEREAS, DOB submits and relies on five NYSDOT photographs, certified by the along with an April 17, 2018 New York State Department of Transportation Document Certification letter, as being “a true and complete copy of New York State Department of Transportation’s photolog images taken of Interstate 95 North (a/k/a Cross Bronx Expressway) in the vicinity of 945 Zerega Avenue, the Bronx, New York during the time period of 1978–1995; and

WHEREAS, DOB argues that the NYSDOT photos are a business record and constitute the best form of evidence to determine the existence of the Sign; and

WHEREAS, The NYSDOT photographs represent the presence, or lack thereof, of the Sign on the following dates: June 28, 1978, June 18, 1981, May 7, 1985, October 20, 1990, and May 16, 1995; and

WHEREAS, in the 1978, 1981, and 1985 NYSDOT photos, neither the Sign, nor sign structure, are visible on the subject site; and

WHEREAS, DOB argues that the NYSDOT photos constitute proof that the Sign is not entitled to non-conforming use status, pursuant to Z.R. § 42-55(c)(2), which

states, in part, that “any *advertising sign* erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979 . . . shall have legal *non-conforming use* status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979,” and it must be determined that the Sign did not exist on November 1, 1979, and, as such, is not an established non-conforming use; and

WHEREAS, the NYSDOT photos establish a higher form of proof than the Owner’s 1978 lease, which only proves a right to occupy, and the 1980 Work Completion Notice; and

Owner’s Position

WHEREAS, the Owner rejects the probative value of the NYSDOT photos, in light of DOB TPPN 14/1988, first arguing that they are not substantial new evidence and have always been available, and, second, characterizing them as not meeting the standard of evidence equivalent to City Agency or public utility records, and must be considered as equal to the same status as bills indicating the use within the building; and

WHEREAS, the Owner argues that the 1978 NYSDOT photo is of no probative value as to the Zerega Sign’s legal establishment as a non-conforming advertising sign because it predates the relevant November 1, 1979, date; and

WHEREAS, the Owner further argues that the 1981 NYSDOT photo, assuming it be viewed in the same light as a business record, is rebutted by a July 15, 1980, Allied Outdoor work completion notice, stating “[t]his is to advise you that on 6/12/80 the Outdoor Advertising Display located at 945 Zerega Ave., Bronx was completed” and bears only the following information, “Product: Supermarket Type: Paint X;” and

WHEREAS, the 1985 NYSDOT photo cannot serve to prove a consecutive two-year period of discontinuance or abandonment and, taken at an equal value to the Owner’s business records, a November 18, 1978 Premier Roofing Co. Inc. Specifications and June 12, 1978 lease, have been rebutted; and

WHEREAS, considering the NYSDOT photos as a of tertiary probative value, a 1983 NYC Tax Photo and 1980 Work Completion Notice should serve to demonstrate the existence of the sign on the November 1, 1979, establishment date; and

DISCUSSION

WHEREAS, the Board finds the NYSDOT photos are conclusive evidence that the sign was not erected on November 1, 1979; and

WHEREAS, further, the NYSDOT photos demonstrate that, even if the presence of the sign had been established, the use of the sign for advertising use was discontinued or never existed for a period of two or more years; and

WHEREAS, the only evidence submitted by the Owner to rebut the evidence presented in the NYSDOT photos is a work completion order considering it established,

MINUTES

as well as out-of-focus and blurry tax photos taken at a distance where there is little, if any, indication that what is being shown is a bulkhead, dunnage or framing for a sign, or the sign itself; and

WHEREAS, the Owner does not rebut the evidence of the lack of a sign in the 1978 and 1981 photos, but argues that the Board should not consider this evidence; and

WHEREAS, the NYSDOT photos are the only evidence clearly showing the roof of the subject building on the November 1, 1979, establishment date and conclusively show the absence of a sign or sign structure, advertising, accessory business sign, or otherwise; and

WHEREAS, unlike the NYSDOT photos that are certified by NYSDOT, the NYC tax photos, which are blurry at best, do not provide evidence of a date certain with which to prove the existence or absence of the sign; and

WHEREAS, while the Owner argues that the NYSDOT photos are evidence that has always been available, nothing prevented the Owner from submitting the same to evidence the Zerega Sign's existence on November 1, 1979, or its continued use as an advertising sign thereafter; and

WHEREAS, based on the foregoing, the Board finds that Owner has failed to demonstrate that the Zerega Sign has been established on November 1, 1979.

Therefore, it is Resolved, that the decision of the Department of Buildings shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, December 10, 2019.

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

764-56-BZ

APPLICANT – Alfonso Duarte, for Barney's Service Station Inc., owner.

SUBJECT – Application July 2, 2019 – Amendment (§11-412) of a previously approved variance permitting the operation of an automotive service station (UG 16B). The amendment seeks to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office and storage space. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, Block 7451, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for postponed hearing.

751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barone Properties II, Inc., owner.

SUBJECT – Application February 25, 2019 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (Genesis Auto Town) which expired on January 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern and Goldie Stern, Owner.

SUBJECT – Application September 23, 2019 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home which expired on August 25, 2019. R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

2017-207-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Ormonde Equities, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application September 18, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (CorePower Yoga) on the second floor of an existing building which expired August 21, 2019. C4-6A/R8B Upper West Side/Central Park West Historic District.

PREMISES AFFECTED – 2030 Broadway, Block 1141, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for postponed hearing.

MINUTES

APPEALS CALENDAR

2019-270-BZY

APPLICANT – Deidre A. Carson, Esq., for 1248 Associates LLC (c/o Hidrock Properties), owner.

SUBJECT – Application September 24, 2019 – to extend the time of construction for a period of one year for a 29-story hotel ZR §81-621. C5-2.5 Special Midtown District. PREMISES AFFECTED – 12-14 East 48th Street, Block 1283, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application, under ZR § 81-621, to establish the right to continue construction of a building containing a transient hotel and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 121190816 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which would lapse as a result of such amendment; and

WHEREAS, a public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of East 48th Street, between Fifth Avenue and Madison Avenue, in a C5-2.5 zoning district, within the Special Midtown District, in Manhattan; and

WHEREAS, the subject site has approximately 50 feet of frontage along East 48th Street, 25 feet of frontage along East 47th Street, 201 feet of depth, 7,532 square feet of lot area and is to be occupied by a 29-story commercial building used as a transient hotel (the “Hotel Building”); and

WHEREAS, on January 20, 2017, DOB determined that the Hotel Building would comply with all applicable zoning regulations and issued building permits authorizing work associated with the New Building Application beginning in January 2017 and culminating in the issuance of a new-building permit on July 20, 2017; and

WHEREAS, effective August 9, 2017 (the “Effective Date”), the City amended the Zoning Resolution such that use of the Hotel Building as a transient hotel is no longer permitted as of right, *see* ZR § 81-621; and

WHEREAS, because “a temporary certificate of occupancy for the entire” Hotel Building would not “have been granted prior to January 31, 2020” (the “Lapse Date”), the building permits authorizing work associated with the New Building Application would automatically lapse, ZR § 81-621; and

WHEREAS, accordingly, the applicant seeks to

establish the right to continue construction of the Hotel Building, under ZR § 81-621, and to renew building permits authorizing work associated with the New Building Application; and

WHEREAS, ZR § 81-621 states, in pertinent part:

However, after August 9, 2017, *development* of a *building* containing a *transient hotel* shall be permitted under the regulations which were in effect prior to August 9, 2017, if a new building application for such *development* was filed at the Department of Buildings after June 9, 2016, and a partial permit for such application was issued by the Department of Buildings on or prior to July 20, 2017, and a temporary certificate of occupancy for the entire *building* has been granted prior to January 31, 2020. In the event that such temporary certificate of occupancy has not been granted prior to such date, and an application is filed prior to such date, pursuant to this Section, with the Board of Standards and Appeals, the Board may permit the new building permit to be renewed for a term of one year upon the following findings:

- (1) that the applicant has been prevented from completing such construction by hardship or circumstances beyond the applicant’s control;
- (2) that the applicant has not recovered all or substantially all of the financial expenditures incurred in construction, nor is the applicant able to recover substantially all of the financial expenditures incurred through development that conforms and complies with any applicable amendment to this Resolution; and
- (3) that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the permit that indicate an overriding benefit to the public in enforcement of the special permit provisions of this Section.

In the event that the Board permits the renewal, the temporary certificate of occupancy shall be obtained by no later than January 31, 2021; and

WHEREAS, as a preliminary matter, the record shows that the owner of the subject site filed the New Building Application after June 9, 2016; obtained lawfully issued permits to construct the Hotel Building in accordance with the New Building Application on and before July 20, 2017; and would not have obtained a temporary certificate of occupancy for the entirety of the Hotel Building by the Lapse Date; and

WHEREAS, first, the applicant contends that circumstances beyond its control have prevented it from completing construction; and

WHEREAS, in support of this contention, the applicant furnished a construction schedule and a project delay tracker, reflecting that there was an unanticipated

MINUTES

encroachment by an adjacent building’s underpinning into the subject site and that a concrete subcontractor misjudged the amount of labor required to erect the Hotel Building’s concrete superstructure and ultimately went out of business, leaving concrete work uncompleted; and

WHEREAS, these circumstances resulted in months of delay, notwithstanding the applicant’s efforts to mitigate; and

WHEREAS, accordingly, the Board finds that the applicant has been prevented from completing such construction by hardship or circumstances beyond its control; and

WHEREAS, second, the applicant notes that it has not recovered substantially all of the financial expenditures incurred in construction, submitting that only minor change orders from the Hotel Building have been recovered because the hotel operator is obligated to pay them; and

WHEREAS, the applicant further notes that it would not be able to recover substantially all of the financial expenditures incurred through development in conformity with the Zoning Resolution because of the extent of construction progress (at least 83 percent completed), financial commitments incurred specific to a transient hotel, and associated commitments to the Hotel Building’s form and specific build-out—rendering conversion of the partially constructed Hotel Building to conforming office use financially infeasible; and

WHEREAS, with respect to contractual commitments, should the Hotel Building be abandoned, the applicant states that it would be obligated for damages of \$18 million to the hotel operator and that the applicant would be unable to repay principal and accrued interest totaling approximately \$94 million; and

WHEREAS, with respect to lost hard costs and soft costs the applicant would face by adapting the partially constructed Hotel Building to office use, the applicant states that interior finish work (demising walls, interior partitions, plumbed and fitted-out bathrooms with fixtures, the core, and amenity space) would be removed; that design work would be redone; that HVAC, plumbing, electrical, and fire-safety systems would be removed from hotel rooms; and that hotel-specific components (including model-room buildout, bathroom fixtures, shower doors, vanities, mirrors, fabric wall panels, and guestroom signage) totaling nearly \$5 million would be lost; and

WHEREAS, with respect to converting the partially constructed Hotel Building to office use, the applicant notes that there would be significant additional work, including structural reinforcement and compliance with heightened requirements of an updated New York City Energy Conservation Code that could significantly affect the existing design of the façade and fenestration; and

WHEREAS, accordingly, the Board finds that the applicant has not recovered all or substantially all of the financial expenditures incurred in construction, nor is the applicant able to recover substantially all of the financial expenditures incurred through development in conformity

with the Zoning Resolution; and

WHEREAS, third, the applicant submits that no considerations of public safety, health, or welfare have become apparent since the issuance of building permits associated with the New Building Application; and

WHEREAS, the applicant notes that there has been no change in circumstances with respect to the surrounding area or the proposed plans for the Hotel Building, which does not give rise to any concerns about the public welfare; and

WHEREAS, the applicant also analogizes this standard to ZR § 11-332(b), which is only pertinent after extensions totaling six years from the date of a zoning amendment, and contrasts this application, which was filed two years after the Effective Date and in advance of the Lapse Date; and

WHEREAS, the applicant notes that, should this application be denied, the applicant would face a serious risk of bankruptcy—without any corresponding benefit to the public—because of the magnitude of the losses that would be incurred in attempting to reconfigure the partially constructed Hotel Building; and

WHEREAS, accordingly, the Board finds that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the permit that indicate an overriding benefit to the public in enforcement of the special-permit provisions of ZR § 81-621; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Hotel Building, under ZR § 81-621, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, under ZR § 81-621, to establish the right to continue construction of a building containing a transient hotel and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 121190816, before the effective date of an amendment to the Zoning Resolution, which would lapse as a result of such amendment, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a temporary certificate of occupancy, for one year, expiring January 31, 2021.

Adopted by the Board of Standards and Appeals, December 10, 2019.

MINUTES

2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.

SUBJECT – Application December 1, 2017 – Pursuant to § 645 of the New York City Charter, the Department of Buildings (the Department") respectfully submits to the Board of Standards and Appeals (the "Board") this statement in support of its application to modify certificate of occupancy 321114450F dated September 1, 2015.

PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for adjourned hearing.

2018-198-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Debbie Ann Culotta, owner.

SUBJECT – Application December 12, 2018 – Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 85 Trenton Court, Block 6708, Lot 13 (tent.), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

ZONING CALENDAR

2019-40-BZ

CEQR #19-BSA-098M

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for 177 East 73rd Owner LLC.; 175 East 73rd Owner LLC, lessee.

SUBJECT – Application March 1, 2019 – Variance (§72-21) to permit the enlargement of a House of Worship (UG 4) (Persian Jewish Center) contrary to ZR §24-36 (rear yard); ZR §24-11 (lot coverage); ZR §§24-50 & 23-662 (minimum base height and maximum height of buildings and setback). R8B (NYC Individual Landmarked Buildings)

PREMISES AFFECTED – 175-179 East 73rd Street, Block 1408, Lot(s) 30 and 31, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 30, 2019, acting on

Alteration Application No. 121189221, reads in pertinent part:

1. ZR 24-36 Rear Yard: Proposed rear yard above the first story is less than 30’; contrary to ZR 24-36.
2. ZR 24-11 Lot Coverage: Proposed exceeds 70%; contrary to ZR 24-11
3. ZR 24-50, 23-662 Minimum Base Height: Proposed is less than 55’, contrary to ZR 23-662, applicable per ZR 24-50.
4. ZR 24-50, 23-662 Maximum Height of Buildings and Setback: Proposed base and building height exceeds 75’, contrary to ZR 23-662, applicable per ZR 24-50; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R8B zoning district, the conversion and enlargement of existing buildings for use as a house of worship that does not comply with zoning regulations for rear yards, lot coverage, base height, and height and setback, contrary to ZR §§ 24-36, 24-11, 24-50, and 23-662; and

WHEREAS, this application has been brought on behalf of Beit Yousef of New York City, a religious institution (the “Religious Institution”); and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, with continued hearings on October 3, 2019, and December 10, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, a resident of the surrounding area provided testimony in opposition to this application, citing concerns with any incursion into the rear yard; and

WHEREAS, the subject site is located on the north side of East 73rd Street, between Lexington Avenue and Third Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 60 feet of frontage along East 73rd Street, 102 feet of depth, 6,130 square feet of lot area, and is occupied by a five-story, with cellar, commercial building used as a parking garage and a five-story, with cellar, residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1978 when, under BSA Calendar Number 81-78-A, the Board granted a variance of the Multiple Dwelling Law to permit an increase in height and number of stories of an existing converted dwelling; and

WHEREAS, the applicant proposes to convert the existing buildings into a single building used as a house of worship (the Proposed Building) and enlarge the Proposed Building as follows: on Lot 31 from a non-complying building height of 75’-6” (roof) and 89’-10” (elevator car shaft) to 75’-6” (roof) and 94’-2” (elevator core), maintaining a non-complying base height of 75’-6”, increasing the extent of the encroachment into the rear yard

MINUTES

on floors two through five and leaving a 7'-0" rear yard on floors one through five, increasing lot coverage from 84% to 94%, and increasing floor area from 17,232 square feet (4.2 FAR) to 17,510 square feet (4.3 FAR); and on Lot 30 reducing from a building height of 47'-7" to 43'-1", maintaining the non-complying 37'-6" base height, decreasing the first-floor rear yard from 21'-6" to 3'-0", increasing the second-floor rear yard from 21'-6" to 25'-11", decreasing the third-floor rear yard from 30'-10" to 25'-11", removing the penthouse, decreasing lot coverage from 68% to 63% and decreasing floor area from 5,800 square feet (2.84 FAR) to 4,041 square feet (1.98 FAR); and

WHEREAS, the applicant notes that Lots 31 and 30 will be merged into a single zoning lot, increasing lot coverage from 79% to 83% and decreasing floor area from 23,032 square feet (3.76 FAR) to 21,551 square feet (3.52); and

WHEREAS, the applicant represents that, at the subject site, building height may not exceed 75'-0" under ZR §§ 24-50 and 23-662; base height must be a minimum of 55'-0" under ZR §§ 24-50 and 23-662; no rear yard is required up to a 23'-0" height with a minimum 30'-0" rear yard above under ZR §§ 24-36; lot coverage may not exceed 70% under ZR § 24-11; and floor area may not exceed 31,263 square feet (5.1 FAR) under ZR §§ 24-112; and

WHEREAS, accordingly, the applicant requests the relief set forth herein; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," ZR § 72-21; and

WHEREAS, the Board acknowledges that the applicant, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the Proposed Building is necessary to accommodate the Religious Institution's programmatic needs and that the Religious Institution's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant supplied a study on the Religious Institution's programmatic needs (the "Programmatic Needs Report"), which indicates that the existing buildings would not accommodate the Religious Institution's program because

they lack sufficient space for the Religious Institution's 775 congregants, averaging to 432 required seats for weekly services in the main sanctuary; and

WHEREAS, converting the existing buildings to a house of worship and combining them into a single building as of right would fail to meet the Religious Institution's program because an as-of-right building would only provide 306 seats in the main sanctuary (228 seats at the sanctuary level and 78 seats at a balcony level), which could not be located on the first floor because of required spaces for entrance areas and elevators (including a new, oversized elevator to comply with the New York City Building Code at the rear); and

WHEREAS, the applicant submits that, other than seating capacity, there would be no programmatic distinction between an-as-of-right building and the Proposed Building but that the Proposed building is necessary to accommodate the Religious Institution's program; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the Religious Institution's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the Religious Institution is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the Religious Institution's programmatic needs with adequate space for its congregants; and

WHEREAS, the applicant submits that the Proposed Building would not alter neighborhood character, substantially impair adjacent properties, or be detrimental to the public welfare; and

WHEREAS, in support of this contention, the applicant submitted streetscape illustrations demonstrating that the proposed enlargement of the existing buildings (including mechanical equipment) would have minimum visibility from the street; and

WHEREAS, the applicant notes that the conversion would eliminate a non-conforming parking garage and replace this non-conformity with a use that is more consistent with surrounding land uses and R8B zoning districts; and

WHEREAS, with respect to the built environment, the applicant submitted a study of the surrounding area, finding that nine buildings on the subject block contain non-complying rear yards and lot coverage; and

WHEREAS, in response to questions from the Board at hearing, the applicant revised this application to provide a refrigerated trash room, to eliminate the potential for use of the lower-level roof (other than mechanical equipment), to prohibit sound amplification on any roof level, and to limit use of the upper roof to before 9:00 p.m.; and

WHEREAS, the applicant also studied potential effects of rooftop noise but found no potential for adverse

MINUTES

impacts on nearby residences; and

WHEREAS, in response to community concerns, the Board noted at hearing that rear-yard incursions up to a 23'-0" height are allowed as of right and that there is already an existing car elevator extending into the rear yard proposed to be removed and relocated to the other side of the Proposed Building; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship, and nothing in the record indicates otherwise; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as detailed in the Religious Institution's Programmatic Needs Report, noting that an as-of-right building could not be designed in such a way to provide sufficient seats in the main sanctuary because of the required additional elevator and other interior spaces on the first floor; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment ("EAS") CEQR No. 19BSA098M, received November 21, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction; and

WHEREAS, by correspondence dated October 16, 2018, the Landmarks Preservation Commission ("LPC") represents that the proposed project would not result in any potential for significant adverse impacts with regard to historic and cultural resources; and

WHEREAS, by letter dated September 13, 2019, the Department of Transportation ("DOT") states that the proposed project would not result in any potential for significant adverse impacts with regard to transportation:

based on a Level 1 (Project Trip Generation) Screening Assessment, the proposed project would generate fewer than 50 vehicle trips during the weekday morning and afternoon and Saturday peak hours and that a detailed traffic analysis is not warranted; based on a Level 2 (Trip Assignment) Screening Assessment, a Saturday midday peak hour (372 pedestrian trips) would be generated along the north sidewalk of East 73rd Street but that the sidewalk would operate at Level of Service B in the with-action condition; and, because the project is located in Transit Zone 1, the proposed project would not result in any potential for significant adverse impacts with regard to parking; and

WHEREAS, by letter dated October 30, 2019, the Department of Environmental Protection ("DEP") states the following: based on the results of the mobile and stationary-source noise analyses performed, the proposed project—including the rooftop terrace—would not result in any potential for significant adverse impacts with regard to noise; and, based on the results of the mobile- and stationary-source air quality analyses performed, the proposed project would not result in any potential for significant adverse impacts with regard to air quality; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type I Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R8B zoning district, the conversion and enlargement of existing buildings for use as a house of worship that does not comply with zoning regulations for rear yards, lot coverage, base height, and height and setback, contrary to ZR §§ 24-36, 24-11, 24-50, and 23-662; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received November 19, 2019"—21 sheets; and *on further condition*:

THAT the bulk parameters of the building shall be limited to the following: on Lot 31 a building height of 75'-6" (roof) and 94'-2" (elevator core), a base height of 75'-6", a 7'-0" rear yard on floors one through five; on Lot 30 a base height of 37'-6", a second-floor rear-yard depth of 25'-11", a third-floor rear-yard depth of 25'-11"; and lot coverage of 83% on the zoning lot, as illustrated on the Board-approved drawings;

MINUTES

THAT there shall be no sound amplification of any kind on any roof, including the upper and lower levels;

THAT there shall be no lighting on the roof after 6:00 p.m.;

THAT there shall be no use of the roof after 9:00 p.m.;

THAT that there shall be no use of the lower roof level except for mechanical equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-40-BZ”), shall be obtained within four years, by December 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2019.

2019-157-BZ

CEQR #19-BSA-135Q

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, Block 1436, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated April 22, 2019, acting on Department of Buildings (“DOB”) Alteration Type I Application No. 421885687, reads in pertinent part:

“Proposed reinstatement of existing Use Group 6 e[a]ting and drinking establishment with accessory drive thru, in a R4/C1-2 zoning district, requires special permit pursuant to zoning resolution section 73-243;” and

WHEREAS, this is an application under ZR §§ 73-243

and 73-03 to permit, in an R4 (C1-2) zoning district, the operation of an eating or drinking establishment with accessory drive-through facilities, contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with a continued hearing on December 10, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of Northern Boulevard and 88th Street, in an R4 (C1-2) zoning district, in Queens; and

WHEREAS, the subject site has approximately 100 feet of frontage along each Northern Boulevard and 88th Street, 10,000 square feet of lot area and is occupied by an existing one-story eating or drinking establishment (1,900 square feet of floor area) with accessory drive-through; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 7, 1999, when, under BSA Cal. No. 43-99-BZ, the Board granted a special permit, pursuant to ZR § 73-243, the proposed operation of an accessory drive-through facility (Use Group (“UG”) 6A) on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term be limited to five years, to expire on December 7, 2004; the landscaping and fencing be provided and maintained in accordance with BSA-approved plans; the premises be maintained graffiti and debris free at all times; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four years, by December 7, 2003; and

WHEREAS, on May 16, 2006, under BSA Cal. No. 43-99-BZ, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term of the special permit for an additional five years from December 7, 2004, to expire on December 7, 2009, and to permit the installation of an amplified menu board and the reconfiguration of accessory parking on condition that all work and site conditions comply with drawings filed with the application; there be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; there be a minimum of seven accessory parking spaces located at the site; the amplified shall only be used from 7:00 AM to 9:00 PM on weekdays, and from 8:00AM to 9:00 PM on Saturday and Sunday; the conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to

MINUTES

specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on January 11, 2011, under BSA Cal. No. 43-99-BZ, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term of the special permit for an additional five years, to expire on December 7, 2014, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the grant expire on December 7, 2014; there be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; there be a minimum of seven accessory parking spaces located at the site; the amplified board only be used from 7:00 AM to 9:00 PM on weekdays, and from 8:00AM to 9:00 PM on Saturday and Sunday; the conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, ZR § 73-243 provides:

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide outdoor table service) with *accessory*¹ drive-through facilities for a term not to exceed five years, provided that the following findings are made:

- (a) the drive-through facility contains reservoir space for not less than 10 automobiles;
- (b) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity;
- (c) the eating or drinking place with *accessory* drive-through facility fully complies with the *accessory* off-street parking regulations for the indicated zoning district, including provision of the required number of *accessory* off-street parking spaces for the indicated zoning district (for the purpose of this finding, the waiver provisions of

Sections 36-231 and 36-232 shall be inapplicable);

- (d) the character of the commercially zoned *street* frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing *commercial uses* contained within such area and to the subject eating or drinking place (excluding the *accessory* drive-through facility portion);
- (e) the drive-through facility shall not have an undue adverse impact on *residences* within the immediate vicinity of the subject premises; and
- (f) there will be adequate buffering between the drive-through facility and adjacent *residential uses*.

In connection therewith, the Board may modify the requirement of Section 32-411 insofar as it relates to the *accessory* drive-through facility. The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant states that the eating or drinking is designed for safe maneuvering and that the drive-through lane provides space for the queuing of a minimum of 10 vehicles without interfering with parking; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than 10 automobiles; and

WHEREAS, the applicant represents that the subject site layout of the drive-through facility, including one exit-only curb cut and one entrance/exit curb cut, ensures the least potential to create traffic on Northern Boulevard, 88th Street or the adjacent roadway network and will cause minimal interference with the flow of traffic; and

WHEREAS, accordingly, the Board finds that the

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

subject drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; and

WHEREAS, the applicant states that the proposed commercial building contains approximately 1,900 square feet of floor area, which, pursuant to ZR § 32-20, requires seven off-street parking spaces, and that seven off-street parking spaces are proposed; and

WHEREAS, accordingly, the Board finds that the proposed eating or drinking place with accessory drive-through facility fully complies with the required number of accessory off-street parking spaces for the indicated zoning district; and

WHEREAS, the applicant states that the subject site fronts on a heavily trafficked intersection, the premises is surrounded by commercial uses, including approximately nine gasoline service stations within one mile of the subject site and other eating and drinking establishments with drive-thru facilities; and

WHEREAS, accordingly, the Board finds that the character of the commercially zoned street frontage within 500 feet of the subject site reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing commercial uses contained within such area and to the subject eating or drinking place (excluding the accessory drive-through facility portion); and

WHEREAS, the applicant represents that the subject site will be lighted to ensure zero light levels on the residential properties located to the rear of the subject site; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject site; and

WHEREAS, the applicant states that the nearest residential use is approximately 41 feet from the menu board at the subject site and that safeguards are proposed to minimize any adverse effects on the character of the surrounding area; and

WHEREAS, specifically, the applicant proposes to provide an eight-foot high vinyl acoustical fence wall along the rear lot line shared with residential properties and proposes to maintain landscaping around the eating and drinking establishment with evergreen shrubs and ground cover; and

WHEREAS, over the course of hearings, the Board raised concerns with respect to the maintenance of the site and whether the subject site proposed sufficient screening to protect the adjacent residential uses; and

WHEREAS, in response, the provided photographs demonstrating the site well maintained with landscaping, provided plans demonstrating zero light levels on adjacent residential uses, and agreed to install and maintain an acoustical fabric barrier on the acoustical fence to further protect the residential uses; and

WHEREAS, the applicant submitted photographs demonstrating the installation of acoustical fabric barriers on

the acoustical fence on the lot line shared with residential properties; and

WHEREAS, accordingly, the Board finds that there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant states that the proposed hours of operation for the eating and drinking establishment is 24 hours per day, seven days per week, and drive-thru facility is closed from 9:00 PM to 7:00 AM, Monday through Thursday, and 9:00 PM to 8:00 AM, Friday and Saturday; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA135Q, dated May 23, 2019; and

WHEREAS, in light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-243 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to *permit*, in an R4 (C1-2) zoning district, the operation of an eating or drinking establishment with an accessory drive-through facility, contrary to ZR § 32-15; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "December 10, 2019"-Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five (5) years, expiring December 10, 2024;

THAT fabric acoustic fencing material shall be installed prior to issuance of resolution;

THAT the acoustical fence shall be maintained as shown on BSA-approved plans, with an acoustical fabric barrier;

THAT lighting levels shall be maintained to provide zero light levels on adjacent residential uses;

THAT the drive-through and annunciator shall be closed from 9:00 PM to 7:00 AM, Monday through Thursday, and 9:00 PM to 8:00 AM, Friday and Saturday;

THAT landscaping shall be installed, maintained and replaced as necessary, as per plans, to maintain a first-class condition;

THAT the premises shall be maintained free of debris

MINUTES

and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-157-BZ”) shall be obtained within four years, by December 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2019.

2018-167-BZ

APPLICANT – Sheldon Lobel, P.C., for Steven Oppenheimer, owner.

SUBJECT – Application October 19, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district.

PREMISES AFFECTED – 1133 East 22nd Street, Block 7604, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 17, 2019, at 10 A.M., for continued hearing.

2019-6-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eastern Prelacy of the Armenian Apostolic Church, owner.

SUBJECT – Application January 9, 2019 – Variance (§72-21) to permit the enlargement of an existing house of worship (*Eastern Prelacy of the Armenian Apostolic Church*) contrary to ZR §24-11 (lot coverage and floor area ratio); ZR §§24-33 & 24-36 (permitted rear yard obstruction within a 30’ required yard). R8 zoning district.

PREMISES AFFECTED – 138 East 39th Street, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2019-29-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 Clinton LLC, owner; International Charter School, lessee.

SUBJECT – Application February 6, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (International Charter School) contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 30 Clinton Avenue, Block 1872, Lot(s) 44, 48, 49, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

2019-158-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (White Castle) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, Block 1845, Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 10, 2019
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

ZONING CALENDAR

2019-156-BZ

CEQR #19-BSA-134Q

APPLICANT – BHB Investment Holdings Glen Oaks, LLC d/b/a Goldfish Swim School, for 255 Mall LLC, owner.

SUBJECT – Application May 23, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Goldfish Swim School*) to be located within an existing retail space located within an existing shopping center contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 257-09 Union Turnpike, Block 8513, Lot 2, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 1, 2019, acting on DOB Alteration Type I Application No. 420665444, reads in pertinent part:

“Proposed use of a physical culture or health establishment for the proposed Goldfish Swim School requires a special permit of the Board of Standards and Appeals per ZR 32-31;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially within an R3-2 (C4-1) zoning district and partially within an R3-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing two-story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the Board was also in receipt of one form letter in support of this application and one form letter in

opposition, citing concerns over traffic congestion and the absence of available parking at the shopping center; and

WHEREAS, the subject site is bounded by Union Turnpike to the south, 255th Street to the west and 260th Street to the east, partially within an R3-2 (C4-1) zoning district and partially within an R3-2 zoning district, in Queens; and

WHEREAS, the site has approximately 1,074 feet of frontage along Union Turnpike, 388 feet of frontage along 260th Street, an irregular depth, 435,275 square feet of lot area and is occupied by a shopping center comprised of several buildings, including an existing two-story plus cellar commercial building in which the proposed PCE will be located; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 1976, when, under BSA Cal. No. 437-76-BZ, the Board granted a special permit, pursuant to ZR § 73-35, to permit within an existing shopping center, the conversion of a retail store into an amusement arcade, for a term of one year, on condition that the work substantially conform to drawings filed with the application; the hours of operation be limited to 10:00 AM to 11:00 PM, Monday through Saturday, and 12 noon to 8 PM, on Sunday; the owner provide adult supervision and security at all times; the amusement machines be restricted to games of skill; there be no games of chance; no food or beverage be sold on the premises; there be no loitering, gambling or prizes awarded; all laws, rules and regulations applicable be complied with, and substantial construction to be completed within one year, by October 19, 1977; and

WHEREAS, on November 29, 1977, under BSA Cal. No. 437-76-BZ, the Board amended the resolution to extend the term for one year, to expire November 29, 1978, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 29, 1978; and

WHEREAS, on January 9, 1979, under BSA Cal. No. 437-76-BZ, the Board amended the resolution to extend the term for one year, on condition that the outside of the premises maintained in a clean condition and all graffiti be removed; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by January 9, 1980; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or

revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, the proposed PCE will be located in the portion of the subject site wholly within a R3-2 (C4-1) zoning district; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 9,880 square feet of floor space on a portion of the cellar level with mechanical space, storage, pool equipment, and pool support structure; and 9,885 square feet of floor area on a portion of the first floor with areas for a swimming pool (2,085 square feet), reception, changing area, office, storage and restrooms; and

WHEREAS, the PCE is proposed to operate, as “Goldfish Swim School,” and will operate from 10:30 AM to 1:00 PM and 4:00 PM to 8:00 PM, Monday through Friday; 8:30 AM to 7:30 PM, Saturday; and, 11:30 AM to 6:30 PM, Sunday; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it will be located in an area characterized by commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain a 2,085 square foot large swimming pool; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because PCE will be located in an existing commercial space in a shopping center; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm system, including a connection to the building’s interior fire alarm will be maintained within the PCE space; and

WHEREAS, by letter dated December 9, 2019, the Fire Department recommends that a fire alarm system be installed in the PCE space and connected to the premises current fire alarm system; non ammonia-based fire extinguishers be installed outside of the space storing the pool chemicals; the use of an ammonia-based fire extinguisher system is prohibited due to the hazard which occurs when chlorine is mixed with ammonia or acids—the combination of ammonia and bleach produces dangerous chlorine gas; and, if the applicant is in agreement with the recommendations, the Fire Department has no further objection to the application, as the Bureau of Fire

MINUTES

Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, at hearing, the Board raised concerns regarding community concerns over the lack of available parking at the shopping center and directed the applicant to prevent PCE patrons from parking in the R3-2 portion of the site; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the proposed operation of the PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-134Q, dated May 23, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on portions of the cellar level and first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within an R3-2 (C4-1) zoning district and partially within an R3-2 zoning district, the operation of a proposed physical culture establishment on portions of the cellar level and first floor of an existing two-story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 21, 2019"-Seven (7) sheets and "September 10, 2019"-One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on December 10, 2029;

THAT no PCE patron parking shall occur in the R3-2 portion of the site;

THAT a sign or plaque shall be placed inside PCE instructing patrons not to park in the R3-2 portion of the site;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as

reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system including a connection to the building's interior fire alarm shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-156-BZ"), shall be obtained within four years, by December 10, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2019.

2016-4149-BZ

APPLICANT – World Design Architecture, PLLC, c/o William A. Alicea, R.A., for Van Nest Development, LLC c/o Jonathan Sacks, owners.

SUBJECT – Application March 21, 2016 – Variance (§72-21) to permit the construction of an eight-story, mixed-use residential and commercial building contrary to bulk and use regulations. R5 zoning district.

PREMISES AFFECTED – 500-508 Van Nest Avenue, Block 4018, Lot(s) 1 & 2, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

2016-4264-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Ronald Morgan, owner.

SUBJECT – Application October 4, 2016 – Variance (§72-21) to permit a residential development consisting of a four story, ten unit multiple dwelling, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 194 Moffat Street, Block 3447, Lot(s) 16 & 17 (Tentative 16), Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

MINUTES

2018-192-BZ

APPLICANT – Sheldon Lobel, P.C., for 229 Lenox Avenue Holding LLC, owner.

SUBJECT – Application November 29, 2018– Variance (§72-21) to permit the legalization of a conversion of an existing mixed-use building to a single-family home in which the glazed windows and doors facing the rear lot line do not comply with the minimum distance for legally required windows for natural light and ventilation contrary to ZR 23-861. C1-4/R7-2 zoning district.

PREMISES AFFECTED – 229 Lenox Avenue, Block 1906, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to March 3, 2020, at 10 A.M., for continued hearing.

2019-48-BZ

APPLICANT – Sheldon Lobel, P.C., for Michael Wong, owner.

SUBJECT – Application March 15, 2019 – Variance (§72-21) to permit the construction of a three-story and cellar, two-family building contrary to ZR §23-49 (Special Provisions for Side Lot Line Walls). R5 zoning district.

PREMISES AFFECTED – 31-45 41st Street, Block 679, Lot 23, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 11, 2020, at 10 A.M., for continued hearing.

2019-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Blimie Stern and William Stern, owners.

SUBJECT – Application March 27, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to FAR and open space (ZR §23-141); side yards (ZR §§23-461) and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1334 East 24th Street, Block 7659, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2019-193-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary (D/B/A/ New York Eye and Ear Infirmary of Mount Sinai), owners.

SUBJECT – Application July 17, 2019 – Variance (§72-21) to permit the construction of a new 7-story plus screened rooftop hospital building (Mount Sinai Beth Israel) contrary to underlying bulk requirements. C1-6A and C1-7A Special Transit Land Use District.

PREMISES AFFECTED – 218-222 Second Avenue (aka) 311-315 East 13th Street), 310 East 14th Street (a/k/a 302 East 14th Street, a/k/a 302-318 East 14th Street/224-26 Second Avenue, 300 East 14th Street, 326 East 14th Street & 313 East 13th Street (a/k/a 313-327 East 13th Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

2-10-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary (D/B/A/ New York Eye and Ear Infirmary of Mount Sinai), owners.

SUBJECT – Application July 17, 2019 – Amendment of a previously approved Special Permit (§73-641) which permitted the enlargement of a community facility (New York Eye and Ear Infirmary). C1-6A and C1-7A Special Transit Land Use District.

PREMISES AFFECTED – 218-222 Second Avenue (aka) 311-315 East 13th Street), 310 East 14th Street (a/k/a 302 East 14th Street, a/k/a 302-318 East 14th Street/224-26 Second Avenue, 300 East 14th Street, 326 East 14th Street & 313 East 13th Street (a/k/a 313-327 East 13th Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on July 23, 2019, under Calendar No. 81-74-BZ and printed in Volume 104, Bulletin No. 31, is hereby corrected to read as follows:

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application December 30, 2016 – Extension of Term /amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 30, 2016, acting on DOB Application No. 421402609, reads in pertinent part:

Proposed extension of term of previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R61 & R6B zoning district which will expire on February 27th, 2017. Refer to Board of Standards & Appeals; and

WHEREAS, this is an application for an extension of the term of a variance previously granted by the Board which expired on February 27, 2017, and an amendment to legalize a recycling structure on the property; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019 and July 23, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is bound by 57th Avenue to the south, 97th Place to the west, 98th Street to the east, located partially within an R6B zoning district and located partially within an R6A (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 192 feet of frontage along 57th Avenue, 184 feet of frontage along 97th Place, 158 feet of frontage along 98th Street, 34,177 square feet of lot area and is occupied by an existing one- (1) story plus mezzanine supermarket (Use Group (“UG”) 6) containing 23,894 square feet of floor area, with loading

berth and 21 accessory off-street parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1962, when, under BSA Cal. No. 549-61-BZ, the Board granted a variance to permit the erection and maintenance of a one- (1) story building for use as stores, only as permitted in a restricted retail district, with loading and unloading, accessory parking of patrons’ cars on the open area, with business signs and curb cuts, for a term of 25 years, to expire February 27, 1987, on condition that the work be done in accordance with drawings filed with the application; on the north, east and west boundaries of the parking lot a split-sapling fence be constructed on steel supports with the finished side of the split-sapling fence facing out; bumpers be provided around the perimeter where cars are to be parked and that between the bumpers and split-sapling fence there be planted a three- (3) foot wide hedge; the hours for loading and unloading be from 8:00 a.m. to 6:00 p.m. only; all laws, rules and regulations applicable be complied with; and, permits be obtained, work done and a certificate of occupancy be obtained within one (1) year, by February 27, 1963; and

WHEREAS, on June 26, 1962, under BSA Cal. No. 549-61-BZ, the Board amended the resolution to permit the building to be redesigned, rearranged, constructed and used substantially as shown on drawings of proposed conditions filed with the application, with arrangement of the balance of the premises and curb cuts shown thereon, on condition that the building be faced with face brick on all four (4) sides; and, other than as amended the resolution be complied with in all respects; and

WHEREAS, on February 13, 1963, under BSA Cal. No. 549-61-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one (1) year, by February 13, 1963, on condition that a certificate of occupancy be obtained; and

WHEREAS, on June 25, 1974, under the subject calendar number, the Board, pursuant to ZR §§ 11-411 and 11-412, permitted the erection of a one- (1) story enlargement to the existing supermarket and extended the term, to expire on February 27, 1987, on condition that all work substantially conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one (1) year, by June 25, 1975; and

WHEREAS, on April 28, 1987, under the subject calendar number, the Board amended the resolution to extend the term for ten (10) years, to expire on February 27, 1997, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by April 28, 1988; and

WHEREAS, on July 13, 1999, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on February 27, 2007, and legalized the enlargement of the storage area, on condition that the premises be kept clean of debris and graffiti; all landscaping be maintained in accordance with BSA-approved plans; all lighting be pointed away from residential uses; the premises be maintained in substantial compliance with the proposed plans submitted with the

MINUTES

application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by July 13, 2000; and

WHEREAS, on April 24, 2007, under the subject calendar number, the Board further amended the resolution to extend the term for ten (10) years, to expire on February 27, 2017, on condition that the use substantially conform to the approved plans; the conditions be listed on the certificate of occupancy; the site be maintained free of debris; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired on February 27, 2017, the applicant seeks a ten- (10) year extension of the term; and

WHEREAS, the applicant also seeks an amendment to legalize a recycling machine structure at the southeast corner of the subject site; and

WHEREAS, over the course of hearings, the Board raised concerns regarding the circulation of the site, the presence of the recycling machine at the corner of the site facing the intersection, instead of a more shielded location, and inaccurate signage shown on the plans; and

WHEREAS, in response, the applicant amended the plans to add one (1) parking space and correct the signage, and submitted plans for a proposed new permanent recycling machine structure, all in satisfaction of the Board; and

WHEREAS, by letter dated January 23, 2019, the Fire Department states that a review of their records indicates that the fire suppression system (sprinkler) was inspected and tested satisfactorily, and the Department has no objection to the Board rendering a decision on this case; and

WHEREAS, the Board finds that ten- (10) year extension of the term of the variance, originally granted in 1962, under BSA Cal. No. 549-61-BZ, as amended through April 24, 2007, under the subject calendar number, is appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, issued February 27, 1962, under BSA Cal. No. 549-61-BZ, as amended through April 24, 2007, under the subject calendar number, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on February 27, 2027, *on condition* that all work and site conditions shall comply with drawings filed with this application marked “Received May 16, 2019”-Five (5) sheets, “July 11, 2019”-Five (5) sheets and “July 23, 2019”-Two (2) sheets; and *on further condition*:

THAT the term of the variance shall expire February 27, 2027;

THAT no trash or recyclables shall be stored outside of the approved structure;

THAT the recycling machine structure materials, including the exterior finish, shall be maintained and

repaired, painted or replaced as necessary to maintain it in first-class condition;

THAT the premises shall be kept clean of debris and graffiti;

THAT all landscaping shall be maintained in accordance with BSA-approved plans;

THAT all lighting shall be pointed away from residential uses;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 81-74-BZ”), shall be obtained within one (1) year, by July 23, 2020;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 23, 2019.

***The resolution has been amended to correct the plans date. Corrected in Bulletin Nos. 49-50, Vol. 104, dated December 20, 2019.**

BULLETIN

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December 27, 2019

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *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

| | |
|-------------------------------------|---------|
| DOCKET | 931 |
| CALENDAR of January 28, 2020 | |
| Morning | 932 |
| Afternoon | 932/933 |

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, December 17, 2019**

Morning Calendar934

Affecting Calendar Numbers:

197-02-BZ 2825 Nostrand Avenue, Brooklyn
530-32-BZ 1029 Brighton Beach Avenue, Brooklyn
74-49-BZ 515 Seventh Avenue, Manhattan
1-11-BZ 189-191 Atlantic Avenue, Brooklyn
209-04-BZ 109-09 15th Avenue, Queens
322-05-BZ 69-69 Main Street, Queens
183-09-BZ 1400 Fifth Avenue, Manhattan
21-91-BZ 2407-2417 Linden Boulevard, Brooklyn
187-97-BZ 148-02 Rockaway Boulevard, Queens
2019-13-A 11-31 Ryerson Street, Brooklyn
2019-14-BZY 11-31 Ryerson Street, Brooklyn
2019-19-A 107 Manee Avenue, Staten Island
2017-231-BZ 765 Pennsylvania Avenue, Brooklyn
2019-194-BZ 50 Titus Avenue, Staten Island
2018-16-BZ 974 Sacket Avenue, Bronx
2018-53-BZ 104 DeGraw Street, Brooklyn
2018-66-BZ 118 West 72nd Street, Manhattan
2018-167-BZ 1133 East 22nd Street, Brooklyn
2019-31-BZ 525 West 26th Street, Manhattan

Afternoon Calendar957

Affecting Calendar Numbers:

2019-180-BZ 1253 Lexington Avenue, Manhattan
2019-189-BZ 97-01 Northern Boulevard, Queens
2019-197-BZ 155 West 23rd Street, Manhattan
2016-4463-BZ 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue), Brooklyn
2018-15-BZ 250 West 26th Street, Manhattan

Corrected Calendar965

Affecting Calendar Numbers:

2016-4274-BZ 1411 39th Avenue, Brooklyn
2016-4339-BZ 5018 14th Avenue, Brooklyn
2017-167-BZ 13C Lake Avenue, Brooklyn
2019-34-BZ 25-27 East 104th Street, Manhattan

DOCKETS

New Case Filed Up to December 17, 2019

2019-304-BZ

180 East 132nd Street, Block 2260, Lot(s) 180, Borough of **Bronx, Community Board: 1**. Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-622(a) and 123-662 (b)) (height); ZR 25-811 and 25-83 (bicycle parking). . M3-1 and M1-5/R8A (MX-1) zoning district. M1-5/R8A (MX-1 and M3-1) district.

2019-305-A

180 East 132nd Street, Block 02260, Lot(s) 0180, Borough of **Bronx, Community Board: 1**. Application requesting a waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district. M1-5/R8A (MX-1) and M3-1 district.

2019-306-BZ

49 West 23rd Street, Block 00825, Lot(s) 0012, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (Rumble Fitness) within portions of the cellar and first floor of an existing building contrary to ZR §41-10. M1-6 zoning district. M1-6 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

REGULAR MEETING JANUARY 28, 2020, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 28, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDERED CALENDAR

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolph Clausi, owner; Hendel Products, lessee.

SUBJECT – Application June 3, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-thru to an eating and drinking establishment (McDonald’s) which expired on February 11, 2019; Waiver of the Board’s Rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

67-96-BZ

APPLICANT – Edward Lauria, for Barton Mark Perlbinde, owner; Robert Smerling, Eastside Exhibition Corp., lessee.

SUBJECT – Application July 29, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the expansion of a then existing theater contrary to use regulations and enlargement of the building contrary to underlying bulk regulation which expired December 17, 2016; Waiver of the Rules. C2-8A/R8B zoning district.

PREMISES AFFECTED – 210 East 86th Street, Block 1531, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

247-08-BZ

APPLICANT – Eric Palatnik, P.C., for 3454 Star Nostrand LLC, owner.

SUBJECT – Application November 29, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the use of accessory drive-through to an eating and drinking establishment (*Starbucks*) which is set to expire on May 12, 2019. C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

2019-69-A & 2019-70-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 335 Mallory LLC, lessee.

SUBJECT – Application April 3, 2019 – Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue, Block 3417, Lot(s) 174, 173, Borough of Staten Island.

COMMUNITY BOARD # 2SI

REGULAR MEETING JANUARY 28, 2020, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 28, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-317-BZ

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district.

PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2018-91-BZ

APPLICANT – Klein Slowik PLLC, for LW Retail Associates, owner.

SUBJECT – Application May 17, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street a/k/a 79 Worth Street, Block 173, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2019-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for Nina Guindi and Albert Guindi, owners.

SUBJECT – Application March 27, 2019 – Special Permit (§73-622) to permit the enlargement and conversion of an existing two-family home to a single-family residence, contrary side yards (ZR §23-461) and rear yard (§23-47). R4 Special Ocean Parkway district.

PREMISES AFFECTED – 373 Avenue W, Block 7153, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RW 5901 Flatlands LLC, owner; Blink Georgetown Inc., lessee.

SUBJECT – Application April 26, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) to be located within a proposed commercial building. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 5901 Flatlands Avenue, Block 7763, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2019-177-BZ

APPLICANT – Pryor Cashman LLP, for Return to Home LLC, owner; CorePower Yoga, lessee.

SUBJECT – Application June 19, 2019– Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*CorePower Yoga*) contrary to ZR §32-10. C4-5 and R6 Special Limited Commercial District and Greenwich Village Historic District.

PREMISES AFFECTED – 56 West 8th Street, Block 553, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

2019-181-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Robert Swain, et al., owner.

SUBJECT – Application June 25, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Y7 Studio) to be located on the ground floor of an existing five-story mixed-use building contrary to ZR §32-10. C6-2A zoning district.

PREMISES AFFECTED – 57 Leonard Street, Block 177, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #1M

2019-203-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

COMMUNITY BOARD #12BX

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 17, 2019
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

197-02-BZ

APPLICANT – Eric Palatnik, P.C., for Nostrand Kings Management, LLC, owner.

SUBJECT – Application January 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Harbor Fitness) which expired on November 26, 2017; Waiver of the Board’s Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, that expired on November 26, 2017, and an amendment to permit a change in the hours of operation of a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on April 30, 2019, after due notice by publication in *The City Record*, with continued hearings on June 25, 2019, and December 17, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application on condition that the surrounding property (East 31st Street to the east and Nostrand Avenue to the west, between Kings Highway and Avenue P) be maintained and kept clean; and

WHEREAS, the subject site is located on a through lot bounded by Nostrand Avenue to the west, East 31st Street to the east, between Kings Highway and Avenue P in an R3-2 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 144 feet of frontage along Nostrand Avenue, 118 feet of frontage along East 31st Street, 11,394 square feet of lot area and is

occupied by a two-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 2002, when, under the subject calendar number, the Board granted a special permit for the legalization of an existing physical culture establishment pursuant to ZR §73-36, for a term of five years, expiring November 26, 2007, on condition that all work substantially conform to the drawings as they apply to the objections noted, filed with the application; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; a minimum four foot wide path of travel to all exits be maintained on the floors and kept free of any equipment or obstructions at all times; the hours of operation be limited to 6:00 a.m. to 11:00 p.m., Monday through Friday, and 8:00 a.m. to 8:00 p.m., Saturday and Sunday; the conditions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related of the relief granted; and

WHEREAS, on March 29, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the special permit to extend the term for ten years, to expire on November 26, 2017, on condition that all work substantially conform to drawings filed with the application; the site be maintained free of debris and graffiti; the conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained within one year, by March 29, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to the specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the term having expired November 26, 2017, and the time to obtain a certificate of occupancy having expired March 29, 2012, the applicant now seeks an extension and an amendment to the special permit to change the hours of operation; and

WHEREAS, because this application was filed more than two years since the expiration of the term, and two years since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the Board’s Rules), of §§ 1-07.3(b)(3)(iv) and 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application;

MINUTES

and

WHEREAS, the applicant represents that there have been no changes to the floor plan, as previously approved by the Board, but the PCE now maintains 24 hours a day, seven days a week of operation; and

WHEREAS, the applicant states that a sprinkler system is installed and maintained within the PCE space and an approved fire alarm system—including a connection of the interior fire alarm system to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated October 16, 2019, the Fire Department states that it has no objection to the applicant's submission on condition that the premises will be partially sprinklered and will not require the restoration of the standpipe system and roof gravity tank; sprinklers will be installed on the underside of the mezzanine levels as well as the first floor lobby entry and will be designed by a licensed professional; a filing for the new system will be made with the Department of Buildings ("DOB") and such applications will be approved and permitted; subsequent testing will be performed by a licensed installer; a fire alarm system will also be installed throughout the premises and will also be designed by a licensed professional; such system will be filed with the Fire Department, approved and permitted; and the system will be tested by a licensed electrician and witnessed by the Fire Department; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and amendments to the special permits are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amend* the resolution, dated November 26, 2002, as amended through March 29, 2011, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten years, expiring November 26, 2027, amend the hours of operation, to 24 hours a day, seven days a week, *on condition*:

THAT the site shall be maintained free of debris and graffiti;

THAT there shall be no change in ownership or operating control of the physical culture establishment without the prior application to and approval from the Board;

THAT restoration of the standpipe system and roof gravity tank, while removed illegally, will not need to be restored, provided the premises are partially sprinklered;

THAT sprinklers shall be installed on the underside of the mezzanine levels as well as the first-floor lobby entry, and shall be designed by a licensed professional;

THAT a filing for the new system shall be made with the Department of Building and such applications shall be

approved and permitted and subsequent resting must be performed by a licensed installer;

THAT a fire alarm system shall also be installed throughout the premises and shall be designed by a licensed professional which shall be filed with the Fire Department, approved and permitted, then tested by a licensed electrician and witnessed by the Fire Department;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 197-02-BZ), shall be obtained within one year, by December 17, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 17, 2019.

530-32-BZ

APPLICANT – Sheldon Lobel, P.C., for Oceana Holding Corp., owner.

SUBJECT – Application August 29, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance which expired on June 26, 2019; Waiver of the Board's Rules. C1-3/R6 and R6 zoning districts.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on June 26, 2019; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

MINUTES

WHEREAS, Community Board 13, Brooklyn, voted eight in favor of and eight in opposition to approval of this application and raised concerns regarding the history of open Department of Buildings (“DOB”) violations at the subject site; and

WHEREAS, the subject site is located on the northeast corner of Brighton Beach Avenue and Brighton 11th Street, partially within an R6 (C1-3) zoning district and partially within an R6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 133 feet of frontage along Brighton Beach Avenue, 273 feet of frontage along Brighton 11th Street, 22,620 square feet of lot area and is occupied by a two-story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 6, 1932, when, under the subject calendar number, the Board granted a variance to permit the extension from a business district into a residence district of a proposed business building (theatre) on condition that the portion of the building extending into the residential use district be of similar design to the balance of the building—face brick with panels; the lot line wall to the north be unpunctured, and also of face brick with panels; there be no openings from the building in the ten foot portion extending into the residential use area except windows; there be no advertising signs of any nature or description within the residence use portion of the premises; all permits be obtained within six months, by June 6, 1933, and any work involved be completed within 18 months, by June 6, 1934; and

WHEREAS, on January 11, 2000, under BSA Cal. No. 172-97-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of the first floor and mezzanine of the existing structure, from a theatre use (Use Group (“UG”) 8) to a catering hall (UG 9), on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the variance be limited to two years, to expire on January 11, 2002; within 120 days from the date of the grant the owner provide a traffic study report to the Board and the Board’s Environmental Staff and, accordingly, provide a plan to the Board for mitigation of any adverse traffic or parking conditions resulting from the findings of said report; said traffic study be conducted at a high occupancy peak period when all uses at the site are operating concurrently; any proposed mitigation plan be subject to Board approval; a copy of the traffic study report and proposed mitigation plan be provided to the local community board and civic associations for comment; the lease of the off-site parking facility be in full effect at all times during the term of the variance; the premises remain graffiti-free at all times; the conditions appear on the new certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by January 11,

2004; and

WHEREAS, on June 26, 2018, under the subject calendar number, the Board amended the variance to legalize the conversion of the first floor to a UG 6 supermarket and amended the Board-approved plans to reflect the conversion of 2,223 square feet of residential floor area to UG 6 office space on the second floor mezzanine, on condition that all work substantially conform to drawings as filed with the application; a new certificate of occupancy be obtained within one year, by June 26, 2019; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application; and

WHEREAS, the applicant represents that there have been delays in obtaining a certificate of occupancy due to filing issues at DOB; and

WHEREAS, at hearing, the Board raised concern regarding the history of open violations at the subject site; and

WHEREAS, the applicant represented that the DOB violation fines had been paid; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedure and *amend* the resolution, dated, as amended through June 26, 2018, so that as amended this portion of the resolution shall read: “to *permit* of two years, expiring June 26, 2021; *on condition*:

THAT the owner shall be responsible for obtaining a certificate of occupancy within two years, by June 26, 2021;

THAT no other open applications be made within that in time period to ensure that the existing applications may be signed off and a certificate of occupancy be obtained;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 530-32-BZ),

MINUTES

shall be obtained within two years, by June 26, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 17, 2019.

74-49-BZ

APPLICANT – Akerman LLP, for 515 Seventh Avenue, owner.

SUBJECT – Application June 27, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of a public parking garage which expired on June 28, 2019; Amendment to reflect a reduction of parking spaces from 360 to 280 through the elimination of parking stackers on the roof level. M1-6 Special Garment Center District.

PREMISES AFFECTED – 515 Seventh Avenue, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, pursuant to Z.R. § 11-411, which permitted the construction and use of the Premises as a garage building and expired on June 28, 2019, and an amendment to permit the reduction in parking spaces; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the Premises are located on the southeast corner of Seventh Avenue and West 38th Street, within an M1-6 zoning district and in the Special Garment Center District, in Manhattan; and

WHEREAS, the Premises have approximately 99 feet of frontage along Seventh Avenue, 200 feet of frontage

along West 38th Street, 19,780 square feet of lot area and are occupied by a four-story, plus cellar and mezzanine, commercial and public parking garage building with 360 spaces; and

WHEREAS, the Board has exercised jurisdiction over the Premises since March 29, 1949, when, under the subject calendar number, the Board granted a variance, for a term of 20 years, to permit the construction and use of a garage building, as proposed on plans filed with the application, on condition that the applicant file drawings showing the workability of the ramps and eliminating gasoline pumps at the building line, but permitting one or two pumps somewhere within the building for emergency gasoline only; and

WHEREAS, on May 3, 1949, under the subject calendar number, the Board amended the variance and granted a term of 21 years to permit changes to the Premises on condition that all doors to stairways be made to swing in the direction of egress; the parapet on the roof where roof parking be proposed be not less than 5’-6” in height above the roof slab and proper bumpers be maintained around such parapet to prevent damage; and, the resolution be complied with in all other respects; and

WHEREAS, on June 28, 1949, under the subject calendar number, the Board further amended the variance to extend the term for 30 years, to expire on June 28, 1979; and

WHEREAS, on October 11, 1949, under the subject calendar number, the Board further amended the variance to permit retail use on the first floor of the Premises; and

WHEREAS, on September 26, 1950, under the subject calendar number, the Board approved amended plans and extended the time to obtain permits and complete work on further condition that a sprinkler system be installed throughout the garage portion of the cellar in addition to the sprinkler curtains at the ramp at each story; and, all permits required be obtained and all work completed within one year, by September 26, 1951; and

WHEREAS, on April 29, 1952, under the subject calendar number, the Board further amended the variance to extend the time to obtain permits, complete the work, and obtain a certificate of occupancy for six months, by October 29, 1952; and

WHEREAS, on March 27, 1979, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on June 28, 1989, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by March 27, 1980; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board further amended the variance to extend the time to obtain a certificate of occupancy for three years, by March 27, 1983; and

WHEREAS, on August 3, 1993, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on June 28, 1999, on condition that other than as amended the resolution be

MINUTES

complied with in all respects; and, a new certificate of occupancy be obtained within one year, by August 3, 1994; and

WHEREAS, on April 4, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on June 28, 2009, on condition that no vehicles be parked on the sidewalk; the premises be kept clean of debris and graffiti; sufficient queuing space be provided to meet zoning district requirements; all signs be maintained in accordance with BSA-approved plans; the Premises be maintained in substantial compliance with drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 4, 2001; and

WHEREAS, on February 3, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to permit an extension of time to obtain a certificate of occupancy for an additional two years, to expire on February 3, 2006, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; all outstanding violations related to life, safety, and health affecting the Premises be resolved prior to issuance of the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objections(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on March 17, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on June 28, 2019, to grant a six-month extension of time to obtain a certificate of occupancy, to expire on September 17, 2009, and to permit an increase in the number of parking spaces for the existing parking garage, on condition that all use and operations substantially conform to plans filed with the application; the conditions appear on the certificate of occupancy; parking garage be limited to 360 parking spaces with 18 reservoir spaces; DOB review and confirm the structural capacity of the building to support roof-top parking with stackers; DOB review and confirm compliance of parking stackers with the Materials and Equipment Acceptance Division ("MEA") requirements; all conditions from the prior resolutions not specifically waived by the Board remain in effect; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)

and/or configuration(s) not related to the relief granted; and

WHEREAS, on January 11, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to grant a one year extension of time to obtain a certificate of occupancy, by January 11, 2012, on condition that the use and operation of the site substantially conform to the previously approved plans; the parking garage be limited to 360 parking spaces with 18 reservoir spaces; DOB review and confirm compliance of parking stackers with the Materials and Equipment Acceptance Division ("MEA") requirements; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, on February 11, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to grant an extension of time to obtain a certificate of occupancy, by January 11, 2015, on condition that the use and operation of the site substantially conform to the previously approved plans; all conditions from the prior resolution not specifically waived by the Board remain in effect; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension; and

WHEREAS, the applicant also seeks an amendment to eliminate 71 rooftop parking stackers and reconfigure the parking layout on the rooftop, eliminating 76 parking and 4 reservoir spaces on the roof and resulting in a total reduction of the number of parking spaces from 360 to 280; and

WHEREAS, the applicant represents that the proposed conditions will include 56 parking spaces and 4 reservoir spaces at the cellar level, 3 parking spaces and 10 reservoir spaces on the first floor, 19 spaces on the second floor, 19 spaces on the third floor, 82 parking spaces on the fourth floor, and 87 parking spaces on the roof level; and

WHEREAS, the applicant represents that the proposed amendment reflects the garage operator's steady decline in the demand for parking at the Premises since 2013; and

WHEREAS, the applicant provided a copy of the garage operator's current and valid license to operate a parking garage at the Premises; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated March 29, 1949, as amended through February 11, 2014, so that as amended this portion of the resolution shall read: "to permit an extension of term of ten years, expiring June 28, 2029,

MINUTES

and to *permit* a reduction in the number of parking spaces, to 280 spaces; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 27, 2019”- Ten (10) sheets; and *on further condition*:

THAT the conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 74-49-BZ”), shall be obtained within one year, and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 8, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 17, 2019.

1-11-BZ

APPLICANT – Carter Ledyard & Milburn LLP by Paul J. Proulx Esq, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application September 16, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) which permit a ground floor enlargement to a pre-existing non-complying commercial building which expired on September 20, 2015. C2-3/R6 LH-1 Limited Height District, Brooklyn Heights Historic District.

PREMISES AFFECTED – 189-191 Atlantic Avenue, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted .

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a variance, granted pursuant to Z.R. § 72-21, which permitted a ground floor enlargement to a preexisting non-complying commercial building, and expired on September 20, 2015; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the Premises are located on the north side of Atlantic Avenue, between Clinton Street and Court Street, within a C2-3 (R6) zoning district, and in the Brooklyn Heights Historic District, in Brooklyn; and

WHEREAS, the Premises have approximately 50 feet of frontage along Atlantic Avenue, 80 feet of depth, 4,000 square feet of lot area, and are occupied by a five-story mixed-use residential and commercial building; and

WHEREAS, the Board has exercised jurisdiction over the Premises since January 11, 2000, when, under BSA Cal. No. 46-99-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit a 4% increase in the degree of non-conformity with regards to floor area, in an existing mixed-use building, which is contrary to Z.R. § 54-31, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the conditions appear on the certificate of occupancy; the applicant obtain all necessary authorizations from the Landmarks Preservation Commission; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 72-23, by January 11, 2004; and

WHEREAS, on September 20, 2011, under the subject calendar number, the Board granted a new variance, pursuant to Z.R. § 72-21, to permit the enlargement of a pre-existing noncomplying commercial building, which increases the degree of non-compliance with regard to floor area regulations, contrary to Z.R. § 53-31, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the bulk parameters of the proposed building be: a total floor area of 14,780 square feet (3.69 floor area ratio (“FAR”)); a residential floor area of 11,320 square feet (2.83 FAR); and a commercial floor area of 3,460 square feet (0.86 FAR), as indicated on the BSA-approved plans; construction proceed in accordance with ZR § 72-23, by September 20, 2015; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

WHEREAS, the time to have completed construction having expired, the applicant now seeks an extension; and

WHEREAS, because this application was filed less

MINUTES

than four years since the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(c)(3), of the Board's Rules to permit the filing of this application; and

WHEREAS, the applicant represents that, as of August 2013, 100 percent of the work at the site has been completed but, due to open violations at DOB, the applicant has not been able to obtain sign-off; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated September 20, 2011, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction of two years, and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 8, 2022; *on condition*:

THAT the following are the bulk parameters of the building: a total floor area of 14,780 square feet (3.69 FAR); a residential floor area of 11,320 square feet (2.83 FAR); and a commercial floor area of 3,460 square feet (0.86 FAR), as indicated on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 1-11-BZ"), shall be obtained within two years, and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 8, 2022;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 17, 2019.

209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application January 3, 2017 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use contrary to underlying use regulations which expired on December 4, 2016. M2-1 zoning district.

PREMISES AFFECTED – 109-09 15th Avenue, Block 4044, Lot 60, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 28, 2020, at 10 A.M., for adjourned hearing.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired on March 7, 2017. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to March 3, 2020, at 10 A.M., for continued hearing.

183-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1400 Retail Owner LLC, owner; TSI West 115th Street LLC dba New York Sports Club, lessee.

SUBJECT – Application January 29, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building which expired on November 1, 2018; Amendment to permit a change in the hours of operation; Waiver of the Board Rules. C4-5X zoning district.

PREMISES AFFECTED – 1400 Fifth Avenue, Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to March 3, 2020, at 10 A.M., for adjourned hearing.

MINUTES

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

187-97-BZ

APPLICANT – Nasir J. Khanzada, for Charanjit Singh, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. The amendment seeks to remove lot 39 from the application as well as enlarge the existing building by 133.68 square feet. C2-3/R5D zoning district.

PREMISES AFFECTED – 148-02 Rockaway Boulevard, Block 12103, Lot 25, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2019-13-A

APPLICANT – Ross F. Moskowitz, Esq., for SDF 47 Ryerson Street, LLC, owner.

SUBJECT – Application January 18, 2019– Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment on December 20, 2018. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district.

PREMISES AFFECTED – 11-31 Ryerson Street, Block 1877, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on Alteration Application No. 321197272 (the “Alteration Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, with continued hearings on October 3, 2019, and December 17, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Ryerson Street, between Flushing Avenue and Park Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 356 feet of frontage along Ryerson Street, 100 feet of depth, 35,483 square feet of lot area, and is to be occupied by a ten-story, with cellar, commercial building for use as a transient hotel (the “Hotel Building”); and

WHEREAS, on November 28, 2018, DOB determined that the Hotel Building would comply with all applicable zoning regulations and issued building permits authorizing work associated with the Alteration Application beginning in September 2017 and culminating in the reissuance of an alteration permit on December 11, 2018; and

WHEREAS, by letter dated September 24, 2019, DOB represents that building permits associated with the Alteration Application were lawfully issued; and

WHEREAS, effective December 20, 2018 (the “Effective Date”), the City amended the Zoning Resolution such that use of the Hotel Building as a transient hotel is no longer permitted as of right, *see* ZR §§ 42-111, 42-32, and 74-803; and

WHEREAS, because not “all work on” the Hotel Building’s “foundations had been completed prior to” the Effective Date, the building permits authorizing work associated with the Alteration Application “automatically lapse[d]” on the Effective Date and “the right to continue construction . . . terminate[d],” ZR § 11-331; and

WHEREAS, accordingly, the applicant seeks to establish the right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the Alteration Application; and

WHEREAS, “[u]nder New York law, a property owner has no right to an existing land-use benefit unless that

MINUTES

right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); see generally *Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”); and

WHEREAS, notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted); and

WHEREAS, as noted above, the record shows that the owner of the subject site obtained lawfully issued permits to construct the Hotel Building in accordance with the Alteration Application before the Effective Date; and

WHEREAS, the applicant submitted evidence that, before the Effective Date and in accordance with the building permits authorizing work associated with the Alteration Application, the owner had effected substantial construction to further development of the Hotel Building; and

WHEREAS, in particular, the applicant submits that the following work had been completed by the Effective Date: cornice work (100 percent), roof abatement (100 percent), bulkhead restoration and coating (90 percent), demolition of interior partitions (92 percent), asbestos abatement (96 percent), façade restoration and coating (81 percent), window replacement that includes replacement of steel window frames (91 percent), fabrication and delivery of custom-made structural steel (42 percent), and framing for interior hotel partitioning (18 percent); and

WHEREAS, the applicant submitted evidence that this construction represents 1,014 days—out of a total projected 2,457 days—of work required to complete the Hotel Building; and

WHEREAS, in response to questions from the Board at hearing, the applicant supplied further explanation that the above work is appropriately included in this application, given the flexibility of the common-law doctrine of vested rights and the work’s necessity for the adaptive reuse and enlargement of the existing building; and

WHEREAS, accordingly, the record reflects that, before the Effective Date and in accordance with the building permits authorizing work associated with the Alteration Application, the owner had effected substantial

construction to further development of the Hotel Building; and

WHEREAS, the applicant submitted evidence that, before the Effective Date, substantial expenses had been incurred, totaling approximately \$21,323,747 (42 percent) of the total development cost of \$50,828,525; and

WHEREAS, the applicant notes that these costs include construction costs (elevator, sprinkler, site logistics, including scaffolding, hoist, and security, demolition, asbestos abatement, façade, windows, steel, electric, fire alarm, and fixtures) and soft costs and irrevocable commitments (including preconstruction, legal and professional fees, architect, engineer, other consultants, civil, environmental, marketing, filing representative, permits and related fees, insurance, taxes, developer, and interest); and

WHEREAS, accordingly, the record reflects that, before the Effective Date, the owner had incurred substantial expenses to further development of the Hotel Building; and

WHEREAS, the applicant submitted evidence that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss—that is, substantial economic harm; and

WHEREAS, in particular, the applicant submits that redesigning the partially constructed Hotel Building into an office building would cause the following: increased costs to establish a stable office asset (including leasing costs to attract tenants) of \$15 million more than that required to establish an operating transient hotel; a reduction in net operating income annually, totaling \$42 million in losses over an 11-year period; a reduction in profit from \$92 million to \$50 million (\$42 million total) over an 11-year period; and a reduced valuation from \$55 million for the Hotel Building to \$44 million for an office building; and

WHEREAS, in response to questions from the Board at hearing, the applicant submitted further evidence clarifying the substantial economic harm posed by the prospecting of abandoning the partially constructed Hotel Building and proceeding with an office building; and

WHEREAS, the applicant also clarifies that the difference of approximately \$2 million between the partially constructed Hotel Building and an office building reflects the cost of removing installed partitions, the cost of such partitions, and the cost of already-purchased steel for elevator work, which would only be useful for the Hotel Building; and

WHEREAS, because of the substantial nature of the losses pertaining to abandoning the partially constructed Hotel Building and proceeding with an office building, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein; and

WHEREAS, accordingly, the record reflects that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss in the form of substantial economic harm; and

WHEREAS, accordingly, the Board finds that the

MINUTES

evidence in the record supports the establishment of a right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the Alteration Application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to *renew* building permits lawfully issued by the Department of Buildings, acting on Alteration Application No. 321197272, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment on December 20, 2018, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four (4) years, expiring December 17, 2023.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2019-14-BZY

APPLICANT – Ross F. Moskowitz, Esq., for SDF 47 Ryerson Street, LLC, owner.

SUBJECT – Application January 18, 2019– Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before December 20, 2018. M1-2 zoning district.

PREMISES AFFECTED – 11-31 Ryerson Street, Block 1877, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, December 17, 2019.

2019-19-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ashland Building LLC, owner.

SUBJECT – Application March 15, 2019 – Proposed development of a three-story, mixed-use building containing commercial use on the ground floor and dwelling units on the second and third floors not fronting on a legally mapped street is contrary to General City Law §36. C2-1/R3A zoning district.

PREMISES AFFECTED – 107 Manee Avenue, Block 6751, Lot 3260 (tent.) Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 3,

2020, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

2017-231-BZ

CEQR #18-BSA-009K

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application July 28, 2017 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-3/R6 zoning district.

PREMISES AFFECTED – 765 Pennsylvania Avenue, Block 4323, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 13, 2018, acting on DOB Alteration Type I Application No. 321510076, reads in pertinent part:

“Proposed automotive service station and accessory retail convenience store contrary to 32-10 and requires a Special Permit pursuant to ZR 73-211;” and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to permit the reestablishment of an automotive service station, previously constructed pursuant to a variance granted by the Board, with an accessory convenience store on a site located in an R6 (C2-3) zoning district; and

WHEREAS, a public hearing was held on this application on February 5, 2019, after due notice by publication in *The City Record*, with continued hearings on September 10, 2019, October 3, 2019, and December 17, 2019, and then to decision on that same date; and
In any C2, C4, C6 or C7 District

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of Pennsylvania Avenue and Linden Boulevard, in an R6 (C2-3) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 155 feet of frontage along Pennsylvania Avenue, 95 feet of frontage along Linden Boulevard, 14,725 square feet of lot area and

MINUTES

is occupied by an existing automotive service station with a one-story accessory convenience store building (1,104 square feet of floor area); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 29, 1948, when, under BSA Cal. No. 1057-47-BZ, the Board granted a variance to permit the premises to be occupied as a gasoline service station including a high speed laundry, on condition that in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; complete working drawings be submitted for further consideration by the Board prior to filing of plans with the borough superintendent; and, such plans be filed within six months, by December 29, 1948; and

WHEREAS, on November 30, 1948, under BSA Cal. No. 1057-47-BZ, the Board approved plans as being in substantial compliance with the requirements of the resolution on condition that all work shown and arrangement thereon shown be maintained; and

WHEREAS, on February 28, 1950, under BSA Cal. No. 1057-47-BZ, the Board amended the resolution to approved revised plans as in substantial compliance with the resolution; and

WHEREAS, on July 14, 1964, under BSA Cal. No. 1057-47-BZ, the Board further amended the resolution to permit a total of 12 550-gallon approved gasoline storage tanks, as shown on revised plans filed with the application; and

WHEREAS, on May 11, 1993, under BSA Cal. No. 51-92-BZ, the Board granted a special permit, pursuant to ZR § 73-211, to permit the proposed reconstruction of an existing automotive service station (Use Group 16) to include an accessory retail convenience store and a metal canopy over new pump islands with illuminated non-flashing business signs and parking for nine automobiles on condition that work substantially conform to drawings as they apply to the objection, filed with the application; along the northern lot line adjoining the adjacent residential district, a strip at least four feet wide be provided and maintained with densely planted shrubs or trees at least four feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years in accordance with BSA approved plans; along the eastern lot line adjoining the adjacent residential district, a four foot high fence be provided and maintained on top of a new retaining wall to provide a barrier at least six feet high, but not more than eight feet above finished grade in accordance with BSA approved plans; the station not include facilities for lubrication, minor repairs or washing of automobiles; all site lighting shall be directed downward and away from adjacent residential uses; the station be kept clean and free of debris; street trees be installed and maintained in accordance with BSA approved plans; there be no parking of vehicles on the sidewalks; reservoir space be provided in accordance with BSA approved plans; all accessory business signs be subject to the applicable district sign regulations, except that such

regulations be modified to permit illuminated non-flashing signs which have a total surface area not exceeding 150 square feet in accordance with BSA approved plans; the special permit be limited to a term of twenty years, to expire on May 11, 2013; the conditions appear on the certificate of occupancy; the entrances and exits be designed in accordance with BSA approved plans so that, at maximum expected operation, vehicular movement into or from the automotive service station will cause a minimum of obstruction on streets and sidewalks; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed by May 11, 1997; and

WHEREAS, the applicant proposes to reestablish an automotive service station with and the existing building as an accessory convenience store, utilizing 640 square feet of sales area; and

WHEREAS, ZR § 73-211 reads as follows:

whose longer dimension is 375 feet or more (exclusive of land in *streets*1), the Board of Standards and Appeals may permit *automotive service stations*, provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not located on an arterial highway or a major *street* has a maximum area of 15,000 square feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened, as the Board may prescribe, by either of the following methods:
 - (a) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

- expected to form a year-round dense screen at least six feet high within three years; or
- (b) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
- (a) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-illuminated or illuminated non-flashing signs with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
 - (b) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect *residential zoning lots* which are adjoining or across the *street*.

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, the Board confirms that the subject site is located in an R6 (C2-3) zoning district that has a longer dimension of at least 380 feet; that the subject site has a minimum of 7,500 square feet of lot area; and, with 14,725 square feet of lot area, has an area of less than 15,000 square feet; and

WHEREAS, with regards to the conditions the Board is required to prescribe pursuant to ZR § 73-211, the applicant represents that the automotive service station will not include facilities for lubrication, minor repairs or washing of automobiles and that the site provides parking spaces for a total of nine motor vehicles, in addition to those spaces available at the pumps; and

WHEREAS, in reference to vehicular movement on the site, the applicant submits that the entrances and exits have been planned so that at maximum operation, vehicular movement into or from the site will cause minimum obstruction on the surrounding streets or sidewalks, and vehicles will enter and exit the site through the five existing curb cuts; and

WHEREAS, the applicant proposes to maintain screening on the site, including a four-foot tall fence on top

of the existing concrete wall, and landscaping the lot line shared with residential use with 13 arborvitae that will grow to be six to eight feet tall; and

WHEREAS, the applicant also proposes to provide four illuminated signs, ranging in size from 12 square feet to 27 square feet (49 square feet on Pennsylvania Avenue and 39 square feet on Linden Boulevard), and seven non-illuminated signs, ranging in size from 6 square feet to 47 square feet (75 square feet on Pennsylvania Avenue and 63 square feet on Linden Boulevard), none of which will face the adjoining Residence District and none of which will project over the property line; and

WHEREAS, the Board finds that the applicant has submitted substantial evidence that the findings set forth in ZR § 73-211 have been met; and

WHEREAS, the applicant states that there are no proposed or existing capital projects along the subject site; and

WHEREAS, the Board finds that the subject proposal will not interfere with a pending public improvement project; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed sales area of the accessory convenience store will be 640 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,681 square feet); and

WHEREAS, the Board finds that, under the conditions and safeguard 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, by letter dated January 25, 2019, the Fire Department stated that it has no objection to this application and the subject site is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank and the fire suppression (dry-chemical system); and

WHEREAS, over the course of hearings, the Board raised concerns with respect to the maintenance of the site and questioned whether the site was sufficiently landscaped and screened to buffer it from the adjacent residential use; and

WHEREAS, in response, the applicant provided evidence to demonstrate the repair of broken curb wheel stops, a parapet wall on the roof of the accessory building to buffer the noise caused by the mechanical unit(s), and provided a landscaping plan to install and maintain densely planted screening on the lot line shared with residential use;

MINUTES

and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”), CEQR No. 18BSA009K, received November 2, 2018; and

WHEREAS, the EAS documents state that the reestablishment of the automotive service station will not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the Board has determined that the operation of the automotive service station at the premises will not have a significant adverse impact on the environment.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03 to permit, in an R6 (C2-3) zoning district, the reestablishment of an automotive service station with an accessory convenience store (Use Group 16); *on condition* that all work shall substantial conform to drawings filed with this application marked “September 20, 2019” Seven (7) sheets; and *on further condition*:

THAT the building, fencing and landscaping shall be provided and maintained, as illustrated on the BSA-approved plans, and be repaired or replaced as necessary to maintain them in first-rate condition;

THAT all landscaping shall be installed by April 2020;

THAT the premises shall be kept graffiti free at all times;

THAT facilities for lubrication, minor repairs or washing shall be located within a completely enclosed building;

THAT the site is designed as to provide reservoir space for a minimum of five waiting automobiles within the subject zoning lot;

THAT entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the automotive service station will cause a minimum obstruction on streets or sidewalks, as illustrated on the BSA-approved plans;

THAT the subject zoning lot is screened along any rear lot line or side lot line adjoining a residence district, as illustrated on the BSA-approved plans;

THAT landscaping, as shown on the BSA-approved plans, shall be maintained in first-rate condition and replaced as needed;

THAT all signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-231-BZ”), be obtained within four (4) years, by December 17, 2023;

THAT substantial construction shall be completed in accordance with ZR § 73-70, by December 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board’s Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reinstatement a variance, pursuant to ZR § 11-411, previously granted by the Board which permitted the maintenance of an existing non-storage garage in a residence use district and expired on April 19, 2002, and an extension of the time to obtain a

MINUTES

certificate of occupancy, which expired on April 13, 2000; and

WHEREAS, a public hearing was held on this application on January 29, 2019, after due notice by publication in *The City Record*, with continued hearings on July 16, 2019 and December 17, 2019, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of Sacket Avenue, between Bogart Avenue and Colden Avenue, in an R4 zoning district, in the Bronx; and

WHEREAS, the site has approximately 125 feet of frontage along Sacket Avenue, 41 feet of depth, 5,131 square feet of lot area and is occupied by a one-story garage; and

WHEREAS, the Board received 11 form letters of objection to this application, citing concerns about the hours of operation, the amount of noise and pollution, the garbage, and the amount of traffic caused by this operation; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 26, 1955, when, under BSA Cal. No. 223-55-BZ, the Board granted a variance to permit the use of the building as a garage for trucks on condition that the plans be filed with the Borough Superintendent and examined and approved for the construction of the building as a garage; trucks stored may be engaged in the removal of rubbish, but not for the removal of any garbage containing food stuff or odorous material; portable firefighting appliances be maintained as the Fire Commissioner directs; and all permits be obtained, including a certificate of occupancy, within six months, by January 26, 1956; and

WHEREAS, on April 30, 1957, under BSA Cal. No. 223-55-BZ, the Board amended the resolution to extend the term for five years, to expire on April 30, 1962, on condition that the use of the subject site is as stated in the resolution and be complied with in all respect; and, all works be completed and a new certificate of occupancy obtained within six months, by October 30, 1957; and

WHEREAS, on September 18, 1962, under BSA Cal. No. 223-55-BZ, the Board further amended the resolution to extend the term of the variance for five years, to expire on September 18, 1967, on condition that the sidewalk, curb and curb cut be put in condition satisfactory to the Borough President; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on November 14, 1967, and January 23, 1973, under BSA Cal. No. 223-55-BZ, the Board further amended the resolution to extend the term of the variance for periods of five years, the latter of which to expire on September 18, 1977, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on April 19, 1977, July 7, 1982, and November 4, 1987, under BSA Cal. No. 223-55-BZ, the

Board further amended the resolution to extend the term of the variance for periods of five years, the latter of which to expire on April 19, 1992, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 4, 1988; and

WHEREAS, on June 23, 1992, under BSA Cal. No. 223-55-BZ, the Board further amended the resolution to extend the term of the variance for five years, to expire on April 19, 1997, on condition that the side yard be kept clean of debris and the property be maintained graffiti free and in substantial compliance with existing and proposed conditions drawing; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by June 23, 1993; and

WHEREAS, on April 13, 1999, under BSA Cal. No. 223-55-BZ, the Board further amended the resolution to extend the term of the variance for five years, to expire on April 19, 2002, on condition that the premises be maintained in substantial compliance with proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 13, 2000; and

WHEREAS, the term having expired April 19, 2002, and the time to obtain a certificate of occupancy having expired April 13, 2000, the applicant now seeks a reinstatement; and

WHEREAS, because this applicant requests a reinstatement of a variance more than ten years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(4)(i), of the Board's Rules to permit the filing of this application; and

WHEREAS, a waiver of § 1-07.3(b)(4)(i) requires the applicant demonstrate that the use has been continuous since the expiration of the term, substantial prejudice would result without such a waiver, and the use permitted by the grant does not substantially impair the appropriate use and development of the adjacent properties; and

WHEREAS, the applicant states that the property owner used the site for its own carting business until 2004 and has since rented the garage to local businesses for vehicle parking; and

WHEREAS, the applicant provided Real Property Income and Expense Form ("RPIE") filed with the Department of Finance to cover the period from January 1, 2003 until December 31, 2004, RPIE filed with the Department of Finance to cover the period from January 1, 2006 until December 31, 2006, Department of Environmental Protection issued water bills for the subject site to cover the period from June 11, 2003 until September 11, 2007, Federal 1040 Returns to cover the period January 1, 2007 until December 31, 2015, an executed lease between Morillo Distributor and the property owner to cover the period from October 1, 2015 until September 30, 2020, and

MINUTES

an executed lease between Detailing Central Corp. and the property owner to cover the period from May 1, 2019 until April 31, 2021; and

WHEREAS, the applicant states the delay in filing this application was due to the retirement of the previous architect associated with the application, and the property owners were unaware that the term had expired until review of their records, and the owners would experience substantial prejudice without such a waiver; and

WHEREAS, the applicant represents that as the subject site has existed for over 60 years, and the surrounding area has mixed-use residential, commercial and manufacturing, including residential uses to the north, and commercial and automotive related uses and a railroad line to the south, and the use permitted by the grant does not substantially impair the appropriate use and development of the adjacent properties; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, permit a reinstatement of a previously authorized variance subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten years each; and

WHEREAS, the applicant represents that, although it does not plan to undergo any construction, the previously approved plans by the Board inaccurately depict the configuration of the subject site; and

WHEREAS, in response to community concerns, over the course of hearings, the Board raised concerns regarding about the noise, pollution, traffic and garbage at the site; and

WHEREAS, in response, the applicant provided photographs of updated landscaping and a repaired sidewalk at the site, operational plans showing the limited hours of operation so as to address concerns regarding the pollution emitted from the cars at the site and a schedule for garbage removal, and a copy of the current lease which prohibits towing at the site between 5 p.m. and 10 a.m. so as to limit the traffic and noise experienced by community members; and

WHEREAS, based upon its review of the record, the Board has determined that the requested reinstatement of term is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amend* the resolution, dated June 23, 1992, as amended through April 13, 1999, so that as amended this portion of the resolution shall read: “to *permit* the maintenance of an existing non-storage garage in a residence use district for a term of ten years, expiring December 17, 2029; *on condition on* that all work and site conditions shall conform to drawings filed with this application marked “Received June 28, 2019”—(1) One sheet; and *on further condition*:

THAT the side yard shall be kept clean of debris and that the property shall be maintained graffiti free and in substantial compliance with existing and proposed conditions drawing;

THAT trucks stored may be engaged in the removal of rubbish, but not for the removal of any garbage containing food stuff or odorous material;

THAT the hours of operation shall be limited to 10 a.m. to 5 p.m., daily;

THAT there shall be no towing between the hours of 5 p.m. and 10 a.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-16-BZ”), shall be obtained within one year, by December 17, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 17, 2019.

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district. PREMISES AFFECTED – 104 DeGraw Street, Block 329, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative: Vice-Chair Chanda.....1

Negative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....4

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 22, 2018, acting on New Building Application No. 320911242, reads in pertinent part:

“Proposed Use Group 2 residential use in an M1-1 district does not conform to the use regulations of Section 42-10 et seq. of the Zoning Resolution and must be referred to BSA”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a four-story mixed-use commercial and residential building that would not comply with applicable use regulations,

MINUTES

contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, with continued hearings on April 23, 2019, June 25, 2019, September 10, 2019, and December 17, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application on condition that the first floor be put to commercial use; and

WHEREAS, the subject site is located on the south side of Degraw Street, between Van Brunt Street and Columbia Street, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 35 feet of frontage along Degraw Street, 100 feet of depth, 3,500 square feet of lot area and is occupied by an open parking lot; and

WHEREAS, the applicant proposes to construct a four-story mixed-use commercial and residential building; and

WHEREAS, residential use is not allowed at the subject site under ZR § 42-10, so the applicant seeks relief from strict compliance with the Zoning Resolution; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, however, as discussed herein, the Board cannot provide this relief because its review reveals that the record does not support each and every one of the findings required to be made under ZR § 72-21, which constitute conditions precedent to the Board’s exercising discretion to grant a variance; and

WHEREAS, the applicant posits that the subject site, which reflects the merger of two lots in common ownership, is beleaguered by unique physical conditions that cause practical difficulties or unnecessary hardship in complying strictly with the Zoning Resolution’s use provisions; and

WHEREAS, in particular, the applicant cites the following: its underdeveloped condition; its narrow width and small size; its interior location; and the immediate adjacency, along both of its side lot lines, of non-conforming residential buildings; and

WHEREAS, as a preliminary matter, these physical conditions must be unique—not generally applicable to the zoning district or surrounding area; and

WHEREAS, the applicant submitted a study alleging that the above conditions are unique because, out of 41 sites in the vicinity, 6 sites have a similar width and depth, but the subject site is the only one not located on a corner with two street frontages or located next to non-conforming residences; and

WHEREAS, with respect to the uniqueness study and office use, the applicant artificially disregards consideration of offices located outside the subject zoning district—essentially disregarding “the neighborhood,” ZR § 72-21(a), in its analysis; and

WHEREAS, the applicant also claims that the above physical conditions create practical difficulties or unnecessary hardship; and

WHEREAS, the applicant submits that the following buildings with 3,500 square feet of floor area (1.0 FAR) could be developed as of right: a one-story commercial office building and a one-story manufacturing building

WHEREAS, as the Board discussed at hearing, however, the applicant fails to analyze how the above physical conditions render these as-of-right developments inadequate; and

WHEREAS, notably, the applicant’s arguments hinge on generally applicable market conditions; and

WHEREAS, however, general market conditions might warrant legislative relief in the form of an amendment to applicable zoning regulations, but market conditions are inappropriate to consider relief in a particular case because they are shared throughout the area; and

WHEREAS, furthermore, the Board notes that the proposed building undercuts the applicant’s own arguments that commercial use cannot be located immediately adjacent to residences: the proposed building is itself mixed use, with residences located immediately above commercial office use; and

WHEREAS, the proposed building’s inclusion of commercial office use also undercuts the applicant’s assertions that the subject site is unsuitable for commercial offices, which could be developed as of right; and

WHEREAS, throughout the City, mixed-use buildings with ground-floor retail or office use are a popular building typology that enliven streetscapes and further undercut the applicant’s allegations that commercial and residential use are generally incompatible; and

WHEREAS, as to the applicant’s arguments about the size of the floorplates, the plans do not corroborate the applicant’s assertions, so it instead appears that there might be an alleged hardship related to the amount of floor area in the as-of-right buildings—though this is completely unrelated to the proposed residential use (nor has the applicant proposed a building that conforms with use regulations but does not comply with floor-area regulations); and

WHEREAS, the Board finds no basis for allegations that an as-of-right commercial office building with a width of 35 feet and a depth of 100 feet is of an insufficient size, especially given that it has no stair core; and

WHEREAS, as to the usability of the as-of-right commercial offices for a small business because of expansion needs, the applicant’s arguments are not credible, given that approximately 89 percent of the City’s businesses have fewer than 20 employees; and

WHEREAS, for comparison with the applicant’s

MINUTES

hardship analysis, the above uniqueness study includes 445 Carroll Street, where a three-story commercial office building with a caretaker's apartment is being developed; and

WHEREAS, 445 Carroll Street reflects a nearly identical building program to the proposed building, which would also be allowed as of right, though the applicant has refused to provide any analysis of this as-of-right option requested by the Board—thereby undercutting the applicant's claims that strict compliance with applicable use regulations presents unnecessary hardship; and

WHEREAS, additionally, the record reflects that the way offices are configured and used has changed over time, and recently there has been an increased flexibility in office layouts, which lend themselves to smaller development sites; and

WHEREAS, the Board finds that the above physical conditions are not unique, nor do they create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant also argues that, because of the above physical conditions, conforming development would not result in a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study alleging that as-of-right developments—consisting of one-story commercial office building and a one-story manufacturing building—would result in a substantial loss on investment but that the proposed mixed-use building would yield a modest return; and

WHEREAS, however, throughout the course of hearings, the applicant revised the financial feasibility study numerous times to partially address the Board's comments; however, whenever one comment (for instance, regarding residential townhouse comparable) was addressed, other areas would be revised (such as removing office income) without explanation such that previously static, unobjectionable assumptions had changed—thereby undercutting the credibility of the entire report; and

WHEREAS, ultimately, it appears that the applicant seeks to develop the subject site to its highest and best use, regardless of mutually beneficial zoning regulations, which does not show that a variance is warranted; and

WHEREAS, although the applicant alleges that the Board's analysis herein and the increasingly rigorous review the Board has undertaken over the past few years in considering variance application reflects a deviation from Board policy in the 1980s, the Board is entitled to change course, especially since it now recognizes that variances are to be sparingly granted based on substantial evidence supporting each and every one of the required findings, *see Matter of Cowan v. Kern*, 41 N.Y.2d 591, 595 (N.Y. 1977) (“The [board] may refuse to duplicate previous error; it may change its views as to what is for the best interests of the [town] More importantly, the board, after [] reflection, could find that previous awards had been a mistake that

should not be again repeated. Certainly, the board was not bound to perpetuate earlier error.”); and

WHEREAS, for the foregoing reasons, the Board does not find that the evidence in the record supports each and every one of the findings required to be made under ZR § 72-21.

Therefore, it is Resolved, that the decision of the Department of Buildings, dated March 22, 2018, acting on New Building Application No. 320911242 shall be and hereby is *upheld* and that this application is hereby *denied*.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2019-194-BZ

CEQR #20-BSA-009R

APPLICANT – Terminus Group, LLC, for Theodora Friscia, owner.

SUBJECT – Application July 19, 2019 – Variance (§72-21) to permit the construction of a single-family detached home contrary to ZR 23-461 (side yards). R3-1 zoning district.

PREMISES AFFECTED – 50 Titus Avenue, Block 4033, Lot 94, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 2, 2019, acting on New Building Application No. 520383709, reads in pertinent part:

“ZR 23-461 The proposed home does not provide the minimum side yard along one side lot line contrary to ZR 23-461”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R3-1 zoning district, the development of a single-family, detached residence that does not comply with zoning regulations for side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, and then to decision on December 17, 2019; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on Titus Avenue, between New Dorp Lane and Ina Street, in an R3-1 zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 25 feet of frontage along Titus Avenue, 101 feet of depth, 2,533 square feet of lot area and is vacant; and

MINUTES

WHEREAS, the applicant proposes to develop a two-story, with cellar, single-family residence with 1,516 square feet of floor area (0.59 FAR) and side yards with depths of 1'-0" to the north and 9'-1" to the south; and

WHEREAS, the applicant submits that, at the subject site, side yards must have a minimum depth of 5'-0" under ZR § 23-461; and

WHEREAS, accordingly, the applicant requests the relief set forth herein; and

WHEREAS, the applicant submits that there are unique physical conditions that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations—namely, the subject site's narrowness, vacant condition, and encumbrance by a sewer easement; and

WHEREAS, in support of the uniqueness contention, the applicant studied the surrounding area, finding that, of 8 vacant interior lots, 2 are used as private driveways for access to residences, 4 are held in common ownership with potential for development with adjacent parcels, and 1 is similarly sized but unencumbered by a sewer easement; additionally, the applicant notes that of 12 lots, 8 are already developed with existing residences, 1 is large enough to develop notwithstanding the easement, and the subject site is the only remaining site encumbered by a sewer easement that cannot be developed as of right; and

WHEREAS, the applicant represents that an as-of-right development results in a building width of 10'-11", which is not a viable for a use as single-family residence; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return; and

WHEREAS, the applicant notes that the proposed development would not alter the essential character of the neighborhood; and

WHEREAS, in support of this contention, the applicant submitted a study of the surrounding area, finding it characterized by a mix of housing typologies with at least 12 residences with side yards between 0 feet and 3 feet; and

WHEREAS, in response to questions from the Board at hearing, the applicant submits that an easement on the subject site prevents its removal and development as of right because of the presence of an active sanitary sewer; and

WHEREAS, by letter dated May 28, 2019, the Department of Environmental Protection ("DEP") states that an inspection of a 15" sanitary sewer running through the easement on the subject site was performed in the presence of a DEP representative and that the sanitary sewer revealed that the sewer was active at the time of investigation; and

WHEREAS, the applicant also furnished a study of

building widths in the vicinity, demonstrating that, of 54 single- and two-family residences along Titus Avenue from New Dorp Lane to Ina Street, building widths range from 14 feet to 46 feet with an average width of approximately 21 feet—consistent with the modest proposed width of 14'-11"; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship and are instead caused by the subject site's unique physical conditions; and

WHEREAS, in particular, the applicant submitted evidence that the subject site has existed in its current configuration since at least 1937; that the sewer easement has existed since 1923; and that the subject site has not been held in common ownership with adjacent parcels since 1961; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant represents that the proposed variance is the minimum necessary to permit a productive use of the site and only reflects a shift in the required side yards necessitated by the presence of the sewer easement; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA009R, dated July 22, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R3-1 zoning district, the development of a single-family, detached residence that does not comply with zoning regulations for side yards, contrary to ZR § 23-461; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received November 29, 2019"-Five (5) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: a side yard with a minimum depth of 1'-0" to the

MINUTES

north, as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2019-194-BZ”), shall be obtained within four years, by December 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2018-66-BZ

APPLICANT – Sheldon Lobel, P.C., for 118 West 72nd Street Retail LLC, owner; Dakota Personal Training LLC, lessee.

SUBJECT – Application May 9, 2018 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (*Dakota Personal Training and Pilates*) with the cellar and first floor of an existing 13-story plus cellar building contrary to ZR §32-10. C4-6A (Upper West Side/Central Park West Historic District).

PREMISES AFFECTED – 118 West 72nd Street, Block 1143, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to March 3, 2019, at 10 A.M. for adjourned hearing.

2018-167-BZ

CEQR #19-BSA-050K

APPLICANT – Sheldon Lobel, P.C., for Steven Oppenheimer, owner.

SUBJECT – Application October 19, 2018 – Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district.

PREMISES AFFECTED – 1133 East 22nd Street, Block 7604, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 19, 2018, acting on Department of Buildings Application No. 321846071, reads in pertinent part:

“The proposed enlargement does not comply with the following sections of the zoning resolution:

1. Proposed floor area is contrary to ZR: 23-141;
2. Proposed open space ratio is contrary to ZR: 23-141;
3. Proposed side yards are contrary to ZR: 23-461;
4. Proposed rear yard is contrary to ZR: 23-47; [. . .]”¹; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 16, 2019 after due notice by publication in *The City Record*, with continued hearings on December 10, 2019, and December 17, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue J and Avenue K, within an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet

¹ The applicant received an objection under ZR 23-631 but is no longer pursuing or requiring relief under that section.

MINUTES

of frontage along East 22nd Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing two-story plus cellar single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single-* or *two-family detached* or *semi-detached residence* within the following areas:

- a. Community Districts 11 and 15, in the Borough of Brooklyn; and
- b. R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- c. within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or perimeter wall height regulations, provided that:

1. any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
2. any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
3. any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single-* or *two-family detached* or *semi-detached residence* with an existing *non-complying* perimeter wall facing

the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the existing single-family residence is a two-story plus cellar detached residence with 0.57 FAR (2,294 square feet of floor area), 113% OSR (2,580 square feet of open space), two side yards with widths of 3'-11" and 8'-10", and a rear yard with a depth of 22'-11"; and

WHEREAS, the applicant proposes to horizontally enlarge the single-family detached residence resulting in a two-story plus attic and cellar single-family detached residence with 0.97 FAR (3,867 square feet of floor area), 63% OSR (2,420 square feet of open space), two side yards with widths of 3'-11" and 8'-10", and a rear yard with a depth of 22'-11" at the first floor, 27 feet at the second floor, and 30 feet above; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 150% OSR (3,000 square feet of open space assuming a complying 0.5 FAR) is required, two side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,421 square feet to 1,580 square feet, the second floor from 873 square feet to 1,537 square feet, and create an attic with 749 square feet of floor area; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the

MINUTES

applicant surveyed single- and two-family residences within 400 feet of the subject site and in an R2 zoning district (the "Study Area"), finding that, of the 104 qualifying residences, 96 residences (92 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.04 and 13 residences have an FAR of 0.97 or greater; and

WHEREAS, the applicant submitted an open space ratio study, demonstrating that 103 lots (99 percent) within the Study Area have an open space ratio less than 150%, ranging from 146% to 48%, and 19 lots have an open space ratio of 63% or less; and

WHEREAS, the applicant submitted a rear yard study demonstrating that, on the subject block, 30 interior lots (100 percent) have rear yards with depths less than 30 feet, ranging from 27 feet to 0 feet, and 20 lots have rear yards with a depth of less than 23 feet; and

WHEREAS, the proposed enlargement includes an extension of the existing non-complying 3'-11" northern side yard, and, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-050K, dated October 22, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story plus cellar single-family detached residence that does not comply

with zoning regulations for floor area ratio ("FAR"), open space ratio ("OSR"), side yards, and rear yards contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "November 22, 2019"-fifteen (15) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: a maximum of 0.97 FAR (3,867 square feet of floor area), a minimum of 63% OSR (2,420 square feet of open space), two side yards with widths of 8'-10" and a minimum width of 3'-11", and a rear yard with minimum depths of 22'-11" at the first floor, 27 feet at the second floor, and 30 feet above, as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-167-BZ"), shall be obtained within four (4) years, by December 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2019-31-BZ

CEQR #19-BSA-089M

APPLICANT – Goldman Harris LLC, for 513 West 26th Street, LLC, owner; The Wright Fit, lessee.

SUBJECT – Application February 8, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (The Wright Fit Performance Lab) to be located on the fourth and fifth floors of a five-story building contrary to ZR §42-10. M1-5 Special West Chelsea zoning district. and West Chelsea Historic District.

PREMISES AFFECTED – 525 West 26th Street, Block 698, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

MINUTES

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 11, 2019, acting on DOB Alteration Type I Application No. 122928289, reads in pertinent part:

“ZR 73-36, ZR 42-00; The proposed Physical Culture establishment, in zoning district M1-5, is not a permitted use, as of right. A special permit from the Board of Standards and Appeals, per Section 73-36 of the Zoning Resolution, must be obtained;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5 zoning district and in the Special West Chelsea District, and in the West Chelsea Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the fourth floor of an existing five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on December 17, 2019, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the Board was also in receipt of two form letters in support of the application; and

WHEREAS, the subject site is located on the north side of West 26th Street between Tenth Avenue and Eleventh Avenue, within an M1-5 zoning district and in the Special West Chelsea District, in Manhattan; and

WHEREAS, the site has approximately 213 feet of frontage along West 26th Street, 99 feet of depth and is occupied by four buildings, including an existing five-story commercial building in which the subject PCE is located; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500

- square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 4,740 square feet of floor area on the fourth floor

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

with areas for a gymnasium, exercise areas, lounge, reception, restrooms and showers; and

WHEREAS, the PCE began operation in July 2019, as “Wright Fit Performance Lab,” and is open from 5:30 AM to 8:30 PM, Monday through Friday, 7:00 AM to 3:00 PM, Saturday, and 9:00 AM to 3:00 PM, Sunday; and

WHEREAS, the applicant states that, while the PCE is located within a commercial building, the PCE space maintains measures to ensure minimal transmission of sound from the PCE to adjacent spaces including various interior and exterior sound attenuated wall assemblies; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because is located entirely within an existing commercial building and is consistent with and contributes to the commercial character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and states that most of the PCE patrons walk or use mass transit to access the PCE; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm, including a connection to an FDNY-monitored central station, are maintained within the PCE space; and

WHEREAS, by letter dated December 16, 2019, the Fire Department states that applications for the fire alarm system and fire suppression (sprinkler) have been filed with the DOB borough office and work shall be completed prior to occupancy of the space; based upon the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) issued Certificate of Appropriateness 19-12892 (LPC 19-12892), on June 22, 2017, approving a proposal to modify a stair bulkhead; construct a one-story rooftop addition and an elevator bulkhead; install condensing units, railings, skylights, and flue anchors; create and seal masonry openings; install drains, skylight, pavers, and railings at the roof; and for interior alterations at the subject property; and, by approval

LPC-19-40479, MISC-19-40479, issued September 10, 2019, approved an amendment to the work approved under that permit consisting of modifying the scope of work, including installing two multi-light metal and glass window and door assemblies instead of two single-light metal and glass window and door assemblies, including one assembly at the south (West 26th Street facing) facade, and one assembly at the north (rear) façade of the approved rooftop addition; and installing one glass and metal door and single-light metal casement window instead of paired metal and glass doors at the south façade of the existing rooftop addition; and expanding the scope of work, including installing one skylight at the roof; removing one skylight and sealing the opening with underlayments and a roofing membrane at the roof; and additional interior alterations at the fourth and fifth floors; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the operation of the existing PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-089M, dated February 13, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the fourth floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5 zoning district and in the Special West Chelsea District, the operation of a physical culture establishment on a portion of the fourth floor of an existing five-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 26, 2019”- seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 1, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the

MINUTES

2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-31-BZ”), shall be obtained within one (1) year, by December 17, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

REGULAR MEETING TUESDAY AFTERNOON, DECEMBER 17, 2019 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

ZONING CALENDAR

2019-180-BZ

CEQR #19-BSA-153M

APPLICANT – Pryor Cashman LLP, for Ventana Condominium, owner; CorePower Yoga, lessee.

SUBJECT – Application June 24, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*CorePower Yoga*) to be located on a portion of the first floor of an existing fifteen-story mixed-use building contrary to ZR §32-10. C1-8X zoning district.

PREMISES AFFECTED – 1253 Lexington Avenue, Block 1532, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 3, 2019, acting on DOB Alteration Type I Application No. 123894964, reads in pertinent part:

“ZR 32-10, ZR 32-31, ZR 73-36: A #Physical Culture Establishment# is not allowed as-of-right in a C1-8X zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval. Approval must be obtained before the application can be assigned to a NYCDOB plan examiner for review. Documents submitted have not been otherwise reviewed by NYCDOB;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C1-8X zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 15-story mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the Board was also in receipt of one form letter in support of the application; and

MINUTES

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 85th Street, within a C1-8X zoning district, in Manhattan; and

WHEREAS, the site has approximately 102 feet of frontage along Lexington Avenue, 93 feet of frontage along East 85th Street, 9,494 square feet of lot area and is occupied by an existing 15-story mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or

corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 2,429 square feet of floor area on the first floor with areas for yoga studios, office, lobby, restrooms and showers; and

WHEREAS, the PCE is proposed to operate as “CorePower Yoga,” with the following hours of operation: 5:30 AM to 9:00 PM, weekdays, and 8:00 AM to 6:30 PM, weekends; and

WHEREAS, the applicant states that, while only light hand weights will be used in the PCE, the PCE space will maintain measures to ensure minimal transmission of sound from the PCE to adjacent spaces including acoustical perimeter walls; isolated floor, partitions, and acoustical hangers in the studios; resilient interfaces in the studios; acoustical ceilings in the studios; and, an isolated ceiling plan in the studios; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it will be located entirely within an existing building and PCE use is consistent with the commercial character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because the PCE will be located below the office uses in the building and will not contain any workout equipment or workout attachments to the ceiling of the PCE space; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm, will be maintained within the PCE space; and

WHEREAS, by letter dated December 13, 2019, the Fire Department states that the premises are protected by a combination suppression system (standpipe and sprinkler) which has been tested satisfactorily to Fire Department rules and regulations; an application (#39326947) for the fire alarm has been filed and is currently being reviewed by the Fire Department plan examination unit; based upon the foregoing the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the proposed PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19-BSA-153M, dated June 25, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C1-8X zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing 15-story mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 12, 2019"-Ten (10) sheets;

and *on further condition:*

THAT the term of the PCE grant will expire on December 17, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-180-BZ"), shall be obtained within four years, by December 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

2019-189-BZ

CEQR #20-BSA-005Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 361 Henry LLC, owner; Blink 97-01 Northern Blvd., Inc., lessee.

SUBJECT – Application July 15,2019– Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within a proposed building contrary to ZR §32-10. C2-4R6A zoning district.

PREMISES AFFECTED – 97-01 Northern Boulevard, Block 1427, Lot 38, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

MINUTES

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 20, 2019, acting on DOB New Building Application No. 421727064, reads in pertinent part:

“Proposed physical culture establishment in C2-4 (R6A) is contrary to section ZR 32-10; therefore special permit [pursuant] required from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an R6A (C2-4) zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first, second and third floors of a proposed three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the subject site is located on the northeast corner of Northern Boulevard and 97th Street, within an R6A (C2-4) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along each Northern Boulevard and 97th Street, 10,000 square feet of lot area and is under construction for a proposed three-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use1* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i)

through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE will occupy 580 square feet of floor area on the first floor with the PCE entrance; 7,000 square feet of floor area on the second floor with areas for exercise equipment, retail, locker rooms, storage and mechanical; and, 7,000 square feet of floor area on the third floor with areas for exercise equipment; and

WHEREAS, the PCE is proposed to operate as “Blink Fitness,” with the following hours of operation: 5:30 AM to 11:00 PM, Monday through Saturday, and 7:00 AM to 9:00 PM, Sunday; and

WHEREAS, the applicant states that, while no noise issues are anticipated because the PCE will be located in a

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

commercial building, sound attenuation measures will be maintained in the PCE space, including rubber flooring in activity areas and demising walls with batt insulation; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it will be located entirely within an existing commercial building, located on a commercial thoroughfare, and PCE use is consistent with the commercial character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will provide an asset to the surrounding area; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm, will be maintained within the PCE space; and

WHEREAS, by letter dated December 16, 2019, the Fire Department states that applications for a fire alarm, sprinkler system and Place of Assembly applications are required to be filed with the DOB borough office and work shall be completed prior to occupancy of the space; based upon the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the proposed PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 20-BSA-005Q, dated July 17, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE on portions of the first, second and third floors, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within an R6A (C2-4) zoning district, the operation of a physical culture establishment on portions of the first, second and third floors of a proposed three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 26, 2019"-Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on December 17, 2029;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number ("BSA Cal. No. 2019-189-BZ"), shall be obtained within four years, by December 17, 2023;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

MINUTES

2019-197-BZ

CEQR #20-BSA-011M

APPLICANT – Eric Palatnik, P.C., for 155 WEST 23 LEASEHOLD LLC, owner; Solidcore New York LLC, lessee.

SUBJECT – Application July 24, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Solidcore*) contrary to ZR §22-10. C6-3X zoning district.

PREMISES AFFECTED –155 West 23rd Street, Block 799, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 23, 2019, acting on DOB Alteration Type I Application No. 123412039, reads in pertinent part:

“Physical Culture Establishment in a[] C6-3X Zoning District is not permitted to ZR 32-10 and is referred to Board of Standards and Appeals (BSA) for special permit ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-3X zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 12-story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 23rd Street, between Seventh Avenue and Avenue of the Americas, within a C6-3X zoning district, in Manhattan; and

WHEREAS, the site has approximately 60 feet of frontage along West 23rd Street, 99 feet of depth, 5,925 square feet of lot area and is occupied by an existing 12-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use*¹ is so located as not to impair

the essential character or the future use or development of the surrounding area; and

- (2) that such *use* contains:
 - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
 - (ii) a swimming pool of a minimum 1,500 square feet; or
 - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
 - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the

¹ Words in *italics* are defined in Section 12-10 of the

Zoning Resolution.

MINUTES

building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the PCE occupies 2,188 square feet of floor area on a portion of the first floor with an exercise area with rowing equipment, reception, restrooms and office; and

WHEREAS, the PCE began operation on October 22, 2018, as "Solidcore," and operates daily, from 6:30 AM to 9:30 PM; and

WHEREAS, the applicant states that, while the PCE is located in a commercial building, sound attenuation measures are maintained in the PCE space, including sound attenuating perimeter walls across the entirety of the space, from the floor to the deck and the track on top and bottom buffered by attenuating floor mat with rubber isolators on the fasteners; a two-inch air gap from the existing demising walls and six-inches of insulation on new partitions with two layers of drywall with sound attenuating glue in between; a heavy-duty grid ceiling to account for two layers of acoustic ceiling tiles, a layer of mass loaded vinyl, and six-inch insulation throughout; and, suspended speakers utilizing spring isolating hangers.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located entirely within an existing commercial building and PCE use is consistent with the commercial character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because there are no residential uses in the building; and

WHEREAS, the applicant represents that a sprinkler system and approved fire alarm, with a connection to a central station, is maintained within the PCE space; and

WHEREAS, by letter dated December 13, 2019, the Fire Department states that these premises are protected by fire suppression systems (standpipe and sprinkler) and a fire alarm system that have been tested satisfactory, as witnessed by members of Fire Prevention; based upon the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, in addition, the Board finds that the existing PCE will not interfere with any public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 20-BSA-011M, dated July 25, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the existing PCE on a portion of the first floor, is appropriate, with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-3X zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing 12-story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 1, 2019"-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 22, 2028;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved fire alarm system shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be

MINUTES

provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also referencing this approval and calendar number (“BSA Cal. No. 2019-197-BZ”), shall be obtained within one year, by December 17, 2020;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 17, 2019.

ACTION OF THE BOARD – Laid over to February 25, 2020, at 10 A.M., for postponed hearing.

Carlo Costanza, Executive Director

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to April 28, 2020, at 10 A.M., for continued hearing.

2018-15-BZ

APPLICANT – Crown Architecture & Consulting, D.P.C., for HAG Realty LLC, owner.

SUBJECT – Application January 31, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Marcelo Garcia Brazilian Jiu Jitsu*) on the third floor of an existing building contrary to ZR §32-10. C6-2A zoning district.

PREMISES AFFECTED – 250 West 26th Street, Block 775, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #4M

MINUTES

*CORRECTION

This resolution adopted on February 26, 2019, under Calendar No. 2016-4274-BZ and printed in Volume 104, Bulletin Nos. 9-10, is hereby corrected to read as follows:

**2016-4274-BZ
CEQR #17-BSA-032K**

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 20167 – Special permit (§73-19) for a school (*Bnos Zion of Bobov*) (Use Group 3) to legalize its use on the first floor of an existing two-story building and to permit its use in the remainder of the existing two-story building and in the proposed enlargement contrary to use regulations (§42-00). Variance (§72-21) to enlarge the existing building by two additional stories contrary to rear yard requirements (§43-26). M1-2 zoning district.

PREMISES AFFECTED – 1411 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 29, 2017, acting on Alteration Application No. 321356215, reads in pertinent part:

1. Enlargement to the proposed Use Group 3 school is contrary to ZR 42-10.
2. The proposed enlargement does not comply with the rear yard requirements of ZR 43-26; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10, and under ZR § 72-21 to permit an enlargement of the school building that does not comply with rear yard requirements, contrary to ZR § 43-46; and

WHEREAS, this application has been brought on behalf of Bnos Zion of Bobov (the “School”), a private school, in conjunction with a variance application under BSA Calendar Number 2016-4339-BZ to permit the development of a seven-story, with cellar and sub-cellar, school building at 5018 14th Avenue, Brooklyn, comprised of Tax Lot 44, Tax Lot 46 and Tax Lot 49 on Block 5649; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with continued hearings on

June 19, 2018, and December 11, 2018, and then to decision on February 26, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of 39th Street, between 14th Avenue and 15th Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 80 feet of frontage along 39th Street, between 93 and 160 feet of depth, 10,268 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, the applicant proposes to enlarge the existing building for the School’s use with 31,470 square feet of floor area (3.06 FAR) and a rear yard depth of 10 feet for the two-story enlargement; and

WHEREAS, the applicant submits that, at the subject site, school use is not permitted under ZR § 42-10, and the two-story enlargement must have a rear yard with a minimum depth of 20 feet under ZR § 43-26; and

WHEREAS, ZR § 73-19 provides:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding *non-Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *street* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the

MINUTES

proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of "school" because it provides full-time day instruction and a course of study that meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the school, within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that, at the subject site, the School requires a development site that can accommodate a building with at minimum of 30,000 square feet of floor area and no more than seven stories; and

WHEREAS, in support of this contention, the applicant submitted a comprehensive study of the School's programmatic needs, demonstrating that the School requires two separate expansion sites (namely, the site located at 5018 14th Avenue and the subject site) in order to accommodate its projected increase in enrollment from 2,031 students to 3,362 students, necessitating an increase of approximately 120,000 gross square footage; and

WHEREAS, the applicant notes that the School currently faces programmatic deficiencies to be resolved by the School's proposed expansion with respect to the crowding of classrooms; the lack of any science laboratory or facilities devoted to home economics, sewing or cooking; insufficient faculty spaces with no conference rooms; and small library spaces and lacking support spaces for tutoring and occupational and physical therapy; and

WHEREAS, thus, the applicant has demonstrated that the School's stated requirements related to size and configuration are justified by the School's programmatic needs; and

WHEREAS, the applicant represents that the School has conducted an exhaustive search for potential expansion sites using the following criteria: suitability for a building with at least 30,000 square feet of floor area and no more than seven stories in height, as required by the School's programmatic needs; and

WHEREAS, the applicant represents that the School considered sites located within an R6 zoning district, where the maximum permitted Floor Area Ratio is 4.8, and sites located within an R5 zoning district, where the maximum permitted Floor Area Ratio is 2.0; however, none of the sites have sufficient lot area to accommodate the School's search criteria; and

WHEREAS, thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, ZR § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant states that the subject site is in the immediate vicinity of an R6 zoning district boundary line and that the entire site is within 400 feet of said R6 zoning district, and notes that school uses are permitted as-of-right in R6 zoning districts; and

WHEREAS, in support of this contention, the applicant submitted a radius diagram and zoning map which reflect that the subject site is adjacent to an R6 zoning district; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, ZR § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that there are a number of automotive and manufacturing uses in the vicinity of the subject site but that, by proposing three-hour rated fireproof construction with composite window-wall noise attenuation of 28 dbA, the School will be adequately separated from these uses; and

WHEREAS, the applicant further notes that, with respect to soil vapor and potential vapor encroachment, coating the building slab with a liquid epoxy vapor barrier will prevent future soil vapor migration and that any other hazardous materials that may be present in the existing building materials will be subject to standard abatement procedures and remediated in accordance with applicable

MINUTES

regulations; and

WHEREAS, the applicant states that, based on an assessment of the surrounding area, no significant adverse air quality impacts are expected; and

WHEREAS, the applicant studied sound levels between 70 dBA and 80 dBA, the proposed building has been designed to provide noise attenuation to reduce the interior sound levels by 28 dBA; and

WHEREAS, the Board finds that the conditions surrounding the site and the proposed building's use will adequately separate the proposed school use from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; accordingly, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that, with respect to transportation, there would be no potential for significant adverse transportation impacts and, after evaluating safety conditions around the subject site, no pedestrian concerns were identified; and

WHEREAS, the applicant further notes that the School has requested a "no standing" zone between the hours of 7:00 a.m. and 7:00 p.m. to be provided in front of the subject site; that the School's staff will employ two-way radio telecommunication devices to guide students to and from school buses; and

WHEREAS, the applicant also submitted an operational plan designed to ensure the safety of the School's arrivals and departures including the following measures: placement of a crossing guard at the subject site; providing at least four teachers at the entrances and exits of the proposed building to escort students to and from school buses; coordinating with local businesses to ensure loading and unloading activities will be scheduled outside the hours of 9:00 a.m. and 4:00 p.m. when the School is in session; installation of protective bollards on the sidewalk to the east of the subject site to provide a physical barrier between pedestrians and vehicles; the implementation of a "no standing" zone for buses along the front of the subject site; and the off-site parking of school buses; and

WHEREAS, with respect to bus parking, the applicant submitted a parking lease to allow bus parking at 1453 62nd Street (Block 5727, Tax Lot 46), Brooklyn as well as an off-street bus parking restrictive declaration to be recorded against the property to ensure that at all times the School will provide off-street bus parking for all of its school buses, when not in use; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated November 28, 2018, DOT states that, with respect to the subject site, the School shall

close unutilized existing curb cuts along the School's proposed frontage, including an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet west of the School's entrance, and an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet east of the School's entrance, and that, upon approval of this application and near the end of construction, the School shall notify DOT so that DOT can determine if any additional traffic safety improvements or parking regulation changes are necessary, including the placement of appropriate school warning signage and school loading zones to be sited in accordance with DOT standards; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon pro-grammatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, consistent with ZR § 72-21, the applicant submits that the School's proposed building is necessary to accommodate the School's programmatic needs and, as discussed above, submitted a study of the School's programmatic needs, which require the following: both secular and religious educational spaces, including classrooms, specialized instructional spaces (including computer training, art, music, sewing and cooking), library resources, food service and space for public assemblies and administrative functions; the pairing of every two grades into a single academic unit under interrelated supervision; and conformance to planning standards and design guidelines for comparable educational facilities (including the provision of light and air to every classroom); and

WHEREAS, the applicant analyzed and detailed the deleterious effects that the complying building form would have on the School's programmatic needs based on the

MINUTES

school's educational mission and projected occupancy; and

WHEREAS, the applicant notes that an as-of-right development would not meet the School's programmatic needs because only 109 classrooms would be allowed, where 129 are required; only 15 of 16 classrooms would have light and air; and the classrooms would be of insufficient size; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, the applicant studied the surrounding area, noting that, as discussed above regarding the School's use, schools are permitted as of right in areas immediately surrounding the subject site; and

WHEREAS, the applicant notes that the subject site is characterized by a mix of residential, commercial and manufacturing uses and that there are other educational facilities in the vicinity; and

WHEREAS, the applicant represents that, with respect to the rear of the subject site, adjacent lots are occupied by commercial, manufacturing and automotive uses with a vacant lot to the north of the subject site; and

WHEREAS, the applicant further represents that none of the uses immediately adjacent to the surroundings site will be adversely affected by a reduction in the depth of the rear yard for the School's proposed enlargement; and

WHEREAS, with respect to the built form of the proposed building, the applicant notes that the façade is primarily composed of brick with the base faced with precast concrete; and

WHEREAS, with respect to refuse, the applicant submits that the School's proposed building will provide areas for refrigerated trash storage space located within the interior of the building; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant submits that the above

practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA032K, dated February 6, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated February 23, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts on architectural or archeological resources; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Environmental Protection ("DEP") states that the March 2017 Revised Remedial Action Plan ("RAP") for 5018 14th Avenue is acceptable on condition that, at the completion of the project, a professional engineer certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and

MINUTES

proof of installation of an engineering control system); and

WHEREAS, by letter dated August 9, 2017, DEP states that the February 2017 Remedial Closure Report for the subject site (1411 39th Street), which summarizes the remedial activities completed, which include the installation of a new concrete lawyer over the existing slab of the building's ground floor, ensuring that any compromise or cracks in the existing slab were either filled or covered with new concrete, the installation of an epoxy vapor barrier over the new concrete layer and the indoor air sampling using a photoionization detector, is acceptable and that DEP has no objection to the issuance of any permits or a certificate of occupancy for the subject site; and

WHEREAS, by letter dated November 14, 2018, DEP states that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; that, for 5018 14th Avenue, in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation are required; and that, for the subject site (1411 39th Street), in order to attain an indoor noise level of 45 dBA within the enlarged building, a composite window-wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation are required; and

WHEREAS, by letter dated January 11, 2019, DOT states that, based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of 5018 14th Avenue (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of the subject site (1411 39th Street) (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because the subject site (1411 39th Street) is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at

5018 14th Avenue, teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19, 73 03 and 72 21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby issue a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73 03 to permit, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10, and under ZR § 72-21 to permit an enlargement of the school building that does not comply with rear yard requirements, contrary to ZR § 43-46; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 26, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the school building at 1411 39th Street shall have a rear yard with a minimum depth of 10 feet, as illustrated on the Board-approved drawings;

THAT the School shall not permit, at 5018 14th

MINUTES

Avenue, any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts;

THAT a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

DECLARATION, made this _____ day of _____, 2019, by Bnos Zion of Bobov, hereafter referred to as the “Declarant” having an office at 5000 14th Avenue, Brooklyn, NY 11219.

WHEREAS, the Declarant operates a school at Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, hereinafter referred to as the “School Sites.”

WHEREAS, the Declarant currently utilizes the parking lot located at Tax Block 5301, Lot 20, County of Kings, for the off-street storage of thirteen (13) school buses (the “Existing Bus Lot”).

WHEREAS, the Declarant, commencing on or about September 1, 2019, will utilize the parking lot located at Tax Block 5727, Lot 46, County of Kings, for the off-street storage of its buses (the “Subsequent Bus Lot”).

WHEREAS, the Declarant has requested various approvals from the New York City Board of Standards and Appeals to construct and/or alter buildings located on the School Sites, under BSA Cal. Nos. 2016-4274-BZ and 2016-4339-BZ.

WHEREAS, the New York City Board of Standards and Appeals requires the execution and recording of this Declaration in connection with the off-street storage of the Declarant’s buses.

NOW, THEREFORE, in consideration of approvals by the New York City Board of Standards and Appeals, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, its successors and assigns that in the event that the Existing Bus Lot or the Subsequent Bus Lot are no longer available to Declarant, Declarant shall utilize an alternate lot at which the parking and storage of its thirteen (13) buses, or the total number of buses utilized by the Declarant at such time, is permitted in accordance with the applicable provisions of the Zoning Resolution of the City of New York;
2. The Declarant shall at no time utilize on-street parking spaces for the storage of any of its buses;
3. This Declaration may not be modified,

amended or terminated without the prior written consent of the New York City Board of Standards and Appeals;

4. The covenants set forth herein shall run with the land of Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, and be binding upon and inure to the benefit of the Declarant their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of approvals by the New York City Board of Standards and Appeals, which may result in the revocation of a certificate of occupancy; and
6. This declaration shall be recorded at the city register’s (county clerk’s) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

THAT in order to attain an indoor noise level of 45 dBA within the building, a composite window-wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation shall be provided, as indicated on the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2016-4274-BZ”), shall be obtained within four (4) years, by February 26, 2023;

THAT the School shall close unutilized existing curb cuts along the School’s frontage, including an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet west of the School’s entrance, and an existing curb cut along frontage on the north side of 39th Street, approximately 5–10 feet east of the School’s entrance; near the conclusion of construction, the School shall notify the Department of Transportation so that the Department of Transportation can determine if any additional traffic safety improvements or parking regulation changes are necessary, including the placement of appropriate school warning signage and school loading zones to be sited in accordance with DOT standards;

THAT based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south

MINUTES

crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of 5018 14th Avenue (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of the subject site (1411 39th Street) (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because the subject site (1411 39th Street) is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at 5018 14th Avenue, teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 26, 2019.

***The resolution has been amended to correct the date of the Final Environmental Assessment Statement CEQR which read: ...July 12, 2018 now reads ...February 6, 2019. Corrected in Bulletin No. 51, Vol. 104, dated December 27, 2019.**

MINUTES

***CORRECTION**

This resolution adopted on February 26, 2019, under Calendar No. 2016-4339-BZ and printed in Volume 104, Bulletin Nos. 9-10, is hereby corrected to read as follows:

2016-4339-BZ

CEQR #17-BSA-032K

APPLICANT – Pryor Cashman LLP, for Bnos Zion of Bobov, owner.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit construction of a school (Use Group 3) (*Bnos Zion of Bobov*) contrary to underlying bulk requirements. R6 zoning district.

PREMISES AFFECTED – 5018 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 28, 2016, acting on New Building Application No. 321380233, reads in pertinent part:

The proposed building is contrary to:

1. Maximum allowable Floor Area (ZR 24-11)
2. Maximum allowable Floor Area Ratio (ZR 24-11)
3. Maximum allowable Lot Coverage (ZR 24-11)
4. Maximum Street Wall Height (ZR 24-522)
5. Setback Requirements (ZR 24-522)
6. Sky Exposure Plane (ZR 24-522)
7. Rear Yard Requirements (ZR 24-36); and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R6 zoning district, the development of a school building that does not comply with zoning regulations for floor area, lot coverage, street wall height, setbacks, sky exposure plane and rear yards, contrary to ZR §§ 24-11, 24-522 and 24-36; and

WHEREAS, this application has been brought on behalf of Bnos Zion of Bobov (the “School”), a private school, in conjunction with a special permit and variance application under BSA Calendar Number 2016-4274-BZ to permit the enlargement of a two-story school building at 1411 39th Street, Brooklyn, comprised of Tax Lot 3 and Tax Lot 71 on Block 5347; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with continued hearings on

June 19, 2018, and December 11, 2018, and then to decision on February 26, 2019; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of 14th Avenue and 51st Street, in an R6 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 80 feet of frontage along 14th Avenue, 120 feet of frontage along 51st Street, 10,021 square feet of lot area and is occupied by an existing four-story building on Tax Lot 49 to be demolished; and

WHEREAS, the applicant proposes to develop a new building at the subject site for the School’s use with 70,444 square feet of floor area (7.03 FAR), lot coverage of 95.3 percent (corner lot portion) and 100 percent (through lot portion), street wall height rising 94’-1” for seven stories, no setbacks along 14th Avenue or 51st Street, sky exposure plane of 0 and no rear yard; and

WHEREAS, the applicant submits that, at the subject site, floor area may not exceed 48,101 square feet (4.80 FAR) under ZR § 24-11; lot coverage may not exceed 70 percent (corner lot portion) or 65 percent (interior lot portion) under ZR § 24-11; street wall height may not exceed 60’-0” for six stories under ZR § 24-522; setbacks of 15 feet along 14th Avenue and 20 feet along 51st Street are required under ZR § 24-522; sky exposure plane may not exceed a ratio of 5.6 to 1 from the horizontal along 14th Avenue and 2.7 to 1 from the horizontal along 51st Street under ZR § 24-522; and a rear yard with a depth of 30 feet is required for the interior lot portion of the subject site under ZR § 24-36; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon pro-grammatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the School’s proposed building is necessary to accommodate the School’s programmatic needs and that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general

MINUTES

circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant submitted a comprehensive study of the School's programmatic needs, demonstrating that the School requires two separate expansion sites (namely, the site located at 1411 39th Street and the subject site) in order to accommodate its projected increase in enrollment from 2,031 students to 3,362 students, necessitating an increase of approximately 120,000 gross square footage, and that the School's programmatic needs require the following: both secular and religious educational spaces, including classrooms, specialized instructional spaces (including computer training, art, music, sewing and cooking), library resources, food service and space for public assemblies and administrative functions; the pairing of every two grades into a single academic unit under interrelated supervision; and conformance to planning standards and design guidelines for comparable educational facilities (including the provision of light and air to every classroom); and

WHEREAS, the applicant notes that the School currently faces programmatic deficiencies to be resolved by the School's proposed development at the subject site with respect to the crowding of classrooms; the lack of any science laboratory or facilities devoted to home economics, sewing or cooking; insufficient faculty spaces with no conference rooms; and small library spaces and lacking support spaces for tutoring and occupational and physical therapy; and

WHEREAS, the applicant analyzed and detailed the deleterious effects that the complying building form would have on the School's programmatic needs based on the school's educational mission and projected occupancy; and

WHEREAS, the applicant notes that an as-of-right development at the subject site would not meet the School's programmatic needs because only 34 classrooms would be allowed, where 53 are required, and the classrooms would be of insufficient size; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed building would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, the applicant studied the surrounding

area, noting that schools are permitted as of right at the subject site; and

WHEREAS, the applicant notes that the subject block is mainly characterized by educational facilities with non-compliances with respect to street wall heights and sky exposure plane regulations; and

WHEREAS, in support of this contention, the applicant provided a streetscape study and photographic montage demonstrating that the height of the proposed development is consistent with the built form of the surrounding area; and

WHEREAS, the applicant further submits that there are a number of six- and seven-story buildings in the vicinity that are of similar height to the proposed building; and

WHEREAS, with respect to refuse, the applicant submits that the School's proposed building will provide areas for refrigerated trash storage space located within the interior of the building; and

WHEREAS, with respect to transportation, the applicant states that there would be no potential for significant adverse transportation impacts and, after evaluating safety conditions around the subject site, no pedestrian concerns were identified; and

WHEREAS, the applicant further notes that there are existing "no standing" zones between the hours of 7:00 a.m. and 7:00 p.m. already provided in front of the subject site on 14th Avenue and 50th Street and that the School's staff will employ two-way radio telecommunication devices to guide students to and from school buses; and

WHEREAS, the applicant also submitted an operational plan designed to ensure the safety of the School's arrivals and departures including the following measures: placement of three or four crossing guards at the subject site; providing at least four teachers at the entrances and exits of the proposed building to escort students to and from school buses; the existing "no standing" zones for buses along the front of the subject site; and the off-site parking of school buses; and

WHEREAS, with respect to bus parking, the applicant submitted a parking lease to allow bus parking at 1453 62nd Street (Block 5727, Tax Lot 46), Brooklyn as well as an off-street bus parking restrictive declaration to be recorded against the property to ensure that at all times the School will provide off-street bus parking for all of its school buses, when not in use; and

WHEREAS, in response to concerns expressed by the Board at hearing, the applicant represents that the School shall not permit any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or

MINUTES

development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected by evidence of School's programmatic needs; and

WHEREAS, in response to questions from the Board with respect to the size of spaces within the School's proposed building, the applicant submitted detailed schedules for each space demonstrating full utilization based on the School's programmatic needs; and

WHEREAS, the applicant further provided evidence that, based on comparisons to square footages for schools constructed within the City, the square footage per student proposed for the School is consistent with other schools recently constructed by the School Construction Authority; and

WHEREAS, accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA032K, dated February 6, 2019; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by correspondence dated February 23, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts on architectural or archeological resources; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Environmental Protection ("DEP") states that the March 2017 Revised Remedial Action Plan ("RAP") for the subject site (5018 14th Avenue) is acceptable on condition that, at the completion of the project, a professional engineer certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements

have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and proof of installation of an engineering control system); and

WHEREAS, by letter dated August 9, 2017, DEP states that the February 2017 Remedial Closure Report for 1411 39th Street, which summarizes the remedial activities completed, which include the installation of a new concrete lawyer over the existing slab of the building's ground floor, ensuring that any compromise or cracks in the existing slab were either filled or covered with new concrete, the installation of an epoxy vapor barrier over the new concrete layer and the indoor air sampling using a photoionization detector, is acceptable and that DEP has no objection to the issuance of any permits or a certificate of occupancy for 1411 39th Street; and

WHEREAS, by letter dated November 14, 2018, DEP states that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; that, for the subject site (5018 14th Avenue), in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation are required; and that, for 1411 39th Street, in order to attain an indoor noise level of 45 dBA within the enlarged building, a composite window-wall noise attenuation of 28 dBA on the southwestern façade facing 39th Street and an alternative means of ventilation are required; and

WHEREAS, by letter dated January 11, 2019, DOT states that, based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of the subject site (5018 14th Avenue) (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of 1411 39th Street (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because 1411 39th Street is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and

MINUTES

approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at the subject site (5018 14th Avenue), teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19, 73-03 and 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R6 zoning district, the development of a school building that does not comply with zoning regulations for floor area, lot coverage, street wall height, setbacks, sky exposure plane and rear yards, contrary to ZR §§ 24-11, 24-522 and 24-36; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received

February 26, 2019"—Twenty four (24) sheets; and *on further condition*:

THAT the bulk parameters of the school building at 5018 14th Avenue shall be as follows: a maximum of 70,444 square feet of floor area (7.03 FAR), maximum lot coverage of 95.3 percent (corner lot portion) and 100 percent (through lot portion), street wall height rising a maximum of 94'-1" for seven stories, no setbacks along 14th Avenue or 51st Street, sky exposure plane of 0 and no rear yard, as illustrated on the Board-approved drawings;

THAT the School shall not permit, at 5018 14th Avenue, any commercial use of any multipurpose gymnasium or dining hall for commercial catering or operation as a banquet hall, which commercial uses are not permitted in R6 zoning districts;

THAT a restrictive declaration shall be recorded against the property substantially conforming to the form and substance of the following:

DECLARATION, made this _____ day of _____, 2019, by Bnos Zion of Bobov, hereafter referred to as the "Declarant" having an office at 5000 14th Avenue, Brooklyn, NY 11219.

WHEREAS, the Declarant operates a school at Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, hereinafter referred to as the "School Sites."

WHEREAS, the Declarant currently utilizes the parking lot located at Tax Block 5301, Lot 20, County of Kings, for the off-street storage of thirteen (13) school buses (the "Existing Bus Lot").

WHEREAS, the Declarant, commencing on or about September 1, 2019, will utilize the parking lot located at Tax Block 5727, Lot 46, County of Kings, for the off-street storage of its buses (the "Subsequent Bus Lot").

WHEREAS, the Declarant has requested various approvals from the New York City Board of Standards and Appeals to construct and/or alter buildings located on the School Sites, under BSA Cal. Nos. 2016-4274-BZ and 2016-4339-BZ.

WHEREAS, the New York City Board of Standards and Appeals requires the execution and recording of this Declaration in connection with the off-street storage of the Declarant's buses.

NOW, THEREFORE, in consideration of approvals by the New York City Board of Standards and Appeals, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, its successors and assigns that in the event that the Existing Bus Lot or the Subsequent Bus Lot are no longer available to Declarant, Declarant shall

MINUTES

utilize an alternate lot at which the parking and storage of its thirteen (13) buses, or the total number of buses utilized by the Declarant at such time, is permitted in accordance with the applicable provisions of the Zoning Resolution of the City of New York;

2. The Declarant shall at no time utilize on-street parking spaces for the storage of any of its buses;
3. This Declaration may not be modified, amended or terminated without the prior written consent of the New York City Board of Standards and Appeals;
4. The covenants set forth herein shall run with the land of Block 5649, Lots 32, 38, 44, 46 and 49, and Block 5347, Lots 13 and 71 on the Tax Map of the City of New York, County of Kings, and be binding upon and inure to the benefit of the Declarant their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of approvals by the New York City Board of Standards and Appeals, which may result in the revocation of a certificate of occupancy; and
6. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

THAT in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 31 dBA on the façade facing 14th Avenue and 28 dBA on the façade facing 51st Street and an alternative means of ventilation shall be provided, as indicated on the Board-approved drawings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2016-4339-BZ"), shall be obtained within four (4) years, by February 26, 2023;

THAT based on a levels of service analysis conducted at ten pedestrian elements (three crosswalks, four sidewalks and three corners), improvements at the intersection of 14th Avenue and 50th Street shall include widening the west crosswalk from 12 feet to 13.5 feet and widening the south crosswalk from 12.5 feet to 13 feet; that the applicant shall

design and implement a 6-foot half-curb extension at the northwest corner of 14th Avenue and 51st Street to reduce the crossing distance across 14th Avenue, which shall be included as part of the Builder's Pavement Plan; that, with regard to unutilized existing curb cuts along the frontage of the subject site (5018 14th Avenue) (at the north side of 51st Street, approximately 90 feet west of 14th Avenue, and the west side of 14th Avenue, approximately 50 feet north of 51st Street) and along the frontage of 1411 39th Street (the north side of 39th Street, approximately 5–10 feet east and west of the School's entrances), the applicant shall close these unutilized existing curb cuts on the Builders Pavement Plan to be filed with DOB; that, because 1411 39th Street is located in a manufacturing area, the applicant shall install a protective physical barrier (such as planters, posts or bollards) near the eastern lot line to be reviewed and approved by DOT Revocable Consent and the New York City Public Design Commission and shall implement a teacher monitoring system on the north side of 39th Street to provide active surveillance of students near the School's main entrance; that the School shall continue to implement its teacher-monitor safety system—including, at the subject site (5018 14th Avenue), teacher monitors to be stationed along the 50th Street, 51st Street and 14th Avenue frontages during arrival and departure times with two New York Police Department crossing guards (one at 14th Avenue and 50th Street, the other at 14th Avenue and 51st Street) with an additional crossing guard proposed at 14th Avenue and 39th Street; that, prior to the completion of construction, the applicant shall coordinate with DOT School Safety and the Brooklyn Borough Engineer for the placement of appropriate school warning and loading signage to ensure that school buses and parent vehicles have direct access to the curb during the School's arrival and departure hours; that the School shall not park school buses on the street and shall instead use an off-street parking lot located on 15th Avenue and 62nd Street to store buses when not in use, and the School shall ensure that buses be parked in an off-street facility in the event that the lease of the proposed off-street parking lot expires; that the proposed pedestrian and school safety measures are reasonable and feasible; and that the applicant shall inform DOT six (6) months prior to the project's completion to coordinate the implementation of the proposed improvement measures and that DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping and signage during the preliminary and final design phases;

THAT at the completion of the project, a professional engineer certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project indicating that all remedial requirements have been properly implemented (including proper transportation and disposal manifest and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and

MINUTES

proof of installation of an engineering control system);

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 26, 2019.

***The resolution has been amended to correct the date of the Final Environmental Assessment Statement CEQR which read: ...July 12, 2018 now reads ...February 6, 2019. Corrected in Bulletin No. 51, Vol. 104, dated December 27, 2019.**

*CORRECTION

This resolution adopted on May 25, 2017, under Calendar No. 2017-167-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:

2017-167-BZ

CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 13C Lake Avenue. Block 8796, Lot 54. Borough of Brooklyn.

COMMUNITY BOARD # 15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space, and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353, and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-

MINUTES

09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lake Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 50 feet of depth, 1,090 square feet of lot area, and is occupied by a one-story single-family home, which is set back 3.9 feet from the northern lot line, 4.1 (southeast smallest setback) to 9.9 (northeast larger setback) feet from the eastern lot line, 0.2 (southwest smallest setback) to 0.0 (southeast setback on the lot line) feet from the southern lot line, 0.4 (southwest smallest setback) to 8.64 (northwest larger setback) feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-394-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a two-story one-family detached residence with 677 square feet of floor area (0.62 FAR), set back approximately 3.6 feet from the northern lot line, approximately 3.9 feet from the eastern lot line, approximately 0.4 feet from the southern lot line, and approximately 0.2 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR

§ 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction

MINUTES

standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200-foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a two-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: setbacks of approximately 3.6 feet from the northern lot line, approximately 3.9 feet from the eastern lot line, approximately 0.4 feet from the southern lot line, and approximately 0.2 feet from the western lot line, with obstructions permitted, as illustrated on the BSA-approved drawings;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

***The resolution has been amended. Corrected in Bulletin No. 51, Vol. 104, dated December 27, 2019.**

MINUTES

***CORRECTION**

This resolution adopted on September 10, 2019, under Calendar No. 2019-34-BZ and printed in Volume 104, Bulletin Nos. 35-38, is hereby corrected to read as follows:

2019-34-BZ

CEQR #19-BSA-092M

APPLICANT – Jodi Stein, of Herrick, Feinstein, LLP, for The Reece School, owner.

SUBJECT – Application February 15, 2019 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) (*The Reese School*) contrary to ZR 24-522 (street wall). R7-2 zoning district.

PREMISES AFFECTED – 25-27 East 104th Street, Block 1610, Lot(s) 11 and 12, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 30, 2019, acting on Alteration Application No. 121188222, reads in pertinent part:

“Proposed height of street wall does not comply with ZR 24-522”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R7-2 zoning district, the enlargement of an existing school building that does not comply with zoning regulations for height and setback, contrary to ZR § 24-522; and

WHEREAS, this application has been brought on behalf of The Reece School (the “School”), a not-for-profit education corporation chartered by the New York State Board of Regents; and

WHEREAS, a public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, and then to decision on September 10, 2019; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of East 104th Street, between Fifth Avenue and Madison Avenue, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 50 feet

of frontage along East 104th Street, 101 feet of depth, 5,045 square feet of lot area and is occupied by a five-story, with cellar, community-facility building used as a school; and

WHEREAS, the applicant proposes to enlarge the existing building from 15,616 square feet of floor area (3.1 FAR) to 25,471 square feet of floor area (5.0 FAR) with a building height of 101'-2½” with a setback of 6'-0”; and

WHEREAS, the applicant states that, at the subject site, the maximum street wall height permitted is the lesser of six stories or 60 feet, after which a 20 foot setback is required with the remainder of the building subject to a sky exposure plane of 2.7 to 1 (vertical to horizontal) under ZR § 24-522; and

WHEREAS, the Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” ZR § 72-21; and

WHEREAS, the Board acknowledges that the School, as an educational facility, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, consistent with ZR § 72-21, the applicant represents that the School’s proposed enlargement is necessary to accommodate the School’s programmatic needs and that the School’s programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, in support of this contention, the applicant provided a comprehensive report on the School’s programmatic needs, demonstrating an enrollment of approximately 130 students, the necessity of small student-to-staff ratio in classrooms to provide a supportive and nurturing learning environment with separate spaces for individual and small-group instruction and activities with mandated services based on each student’s needs (including speech and language, counseling, occupational therapy, and physical therapy), and access to healthy-living and arts programs (including general science with horticulture, creative arts, physical education, and music); and

WHEREAS, the applicant notes that currently, in attempting to meet the School’s programmatic needs and enrollment, a library and a staff lounge have been converted into a classroom with occupational-therapy programs’ displacing related service providers from offices, relegating some educational services to hallways and corners of the

MINUTES

gymnasium; and

WHEREAS, the applicant also submitted the School's master schedule and architectural drawings evidencing the current utilization of each classroom and converted space throughout a typical week; and

WHEREAS, the applicant submits that an as-of-right enlargement would result in an additional five stories with a setback of 20 feet but a maximum building height of 122 feet, constraining floorplates within the enlargement to sizes ranging from 2,054 square feet to 2,270 square feet; and

WHEREAS, the applicant provided architectural diagrams demonstrating that floorplates of these sizes would be inefficient—and would require constant movement between floors for students with disabilities—and would thereby fail to accommodate the School's programmatic need to provide each student with an individualized education; and

WHEREAS, in sum, the applicant analyzed and detailed the deleterious effects that the School's current facility as well as a complying building form have on the School's programmatic needs based on the School's educational mission and projected occupancy; and

WHEREAS, the applicant notes that the proposed enlargement alleviates these constraints by facilitating the needed creation of an enhanced occupational-therapy and physical-therapy support space, five additional classrooms, a music room, a tutoring room and offices for behavioral support specialists and clinicians; and

WHEREAS, consistent with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), the Board finds that the School's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant notes that, because the School is a non-profit organization, this application need not demonstrate financial hardship; and

WHEREAS, instead, the applicant notes and the Board finds that the variance requested is necessary to accommodate the School's programmatic needs with adequate space, facilities and organization; and

WHEREAS, the applicant states that the proposed enlargement reflects a modest increase in the massing of the existing building and would not alter the essential character of the neighborhood or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, finding that the proposed educational use is consistent with the vibrant mix of uses in the vicinity—including community facilities, residences, and commercial uses; and

WHEREAS, the applicant states that the proposed enlargement is substantially shorter than an as-of-right building height, which is permitted to rise to 122 feet; and

WHEREAS, the applicant also notes that buildings in

the vicinity range in height from five to 15 stories and submitted evidence demonstrating that the proposed enlargement is consistent with the surrounding area's built environment; and

WHEREAS, by letter dated September 4, 2019, the Fire Department states that it has no objection to this application; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to accommodate the School's programmatic needs by providing adequate floorplates that would not compromise the School's program, as reflected above and in the School's programmatic-needs report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-092M, dated February 19, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R7-2 zoning district, the enlargement of an existing school building that does not comply with zoning regulations for height and setback, contrary to ZR § 24-522; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received August 29, 2019"-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum building height of 101'-2½" with a setback of 6'-0", as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the

MINUTES

certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2019-34-BZ”), shall be obtained within four (4) years, by August 6, 2023;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction regardless of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 10, 2019.

***The resolution has been amended. Corrected in Bulletin No. 51, Vol. 104, dated December 27, 2019.**