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# BULLETIN

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

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Volume 105, Nos. 1-3

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### DIRECTORY

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NASR SHETA

SALVATORE SCIBETTA

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

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# DOCKETS

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New Case Filed Up to January 14, 2020  
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**2019-307-BZ**

277 South 5th Street, Block 2447, Lot(s) 0035, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment (MetroROCK) to be located on portions of the cellar and first floors of proposed 23-story mixed-use building contrary to ZR §32-10. C4-3 zoning district located on the same zoning lot with the NYC Designated Landmark “The Dime Savings Bank of Williamsburg. C4-3 district.  
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**2020-1-BZ**

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**2020-2-BZ**

318-320 54th Street, Block 00822, Lot(s) 0011, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R6B zoning district. R6B district.  
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**2020-3-A**

142-18 Hook Creek Boulevard, Block 13616, Lot(s) 0105, Borough of **Queens, Community Board: 13**. Proposed development of a two-family residential building located partially inside the bed of the street contrary to General City Law §35. R3X zoning district. R3X district.  
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**2020-4-A**

56 Page Avenue, Block 7580, Lot(s) 0017, Borough of **Staten Island, Community Board: 3**. Proposed development of a three-story commercial building with two levels of underground parking located partially inside the bed of the street contrary to General City Law §35 and request a waiver pursuant to ZR §72-01(G). M1-1 Special South Richmond District. Lower Density Growth Monument Area. M1-1(SRD) district.  
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**2020-5-BZ**

21-10 44th Drive, Block 00078, Lot(s) 7501, Borough of **Queens, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Orangetheory Fitness) to be located on portions of the first floor of an existing eight-story mixed commercial and residential building contrary to ZR §42-10. M1-4/R7A Special Long Island City Special Purpose District. M1-4/R7A; LIC district.  
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**2020-6-BZ**

88 Madison Avenue, Block 00858, Lot(s) 0017, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Strengthen Lengthen Tone) to be located on portions of the first, third and fourth floors of an existing 13-story commercial building contrary to ZR 32-10. C5-2 zoning district. C5-2 district.  
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**2020-7-BZ**

180 Avenue of the Americas, Block 00504, Lot(s) 7501, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Switch Playground) to be located on portions of the cellar and first floors of an existing fourteen-story mixed commercial and residential building contrary to ZR §32-10. C2-5/R7-2 zoning district. R7-2/C2-5 (overlay) district.  
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**2020-8-BZ**

173 East 83rd Street, Block 1512, Lot(s) 0033, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bode) to be located on a portion of the second floor of an existing building contrary to ZR §32-10. C1-9 zoning district. C1-9 district.  
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**2020-9-BZ**

26-11 123 Street, Block 4294, Lot(s) 0019, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the development of a two-family, two story dwelling contrary to underlying bulk requirements. R4A zoning district. R4A district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING FEBRUARY 4, 2020, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 4, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### SPECIAL ORDERED CALENDAR

#### 207-68-BZ

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

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

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north Newburg Street. Block 10315, Lot 0134. Borough of Queens.

**COMMUNITY BOARD #12Q**

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#### 120-13-BZ

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, owner.

SUBJECT – Application August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, irregularly shaped 42,788 square foot lot with frontage on Forest Avenue and Morningstar Road. Block 1180, Lot(s) 6, 49. Borough of Staten Island.

**COMMUNITY BOARD #1M**

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## REGULAR MEETING FEBRUARY 4, 2020, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 4, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### ZONING CALENDAR

#### 2019-37-BZ

APPLICANT – Mango & Lacoviello, LLP, for 58 Corner LLC, owner.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (iLoveKickboxing) to be located on the 1st floor of an existing building contrary to ZR §32-10. C6-2/C4-7, R8/R10 zoning districts.

PREMISES AFFECTED – 600 West 58<sup>th</sup> Street, aka 847 11<sup>th</sup> Avenue, the property is located on the corner of 11<sup>th</sup> Avenue and west 58<sup>th</sup> Street. Block 1105, Lot 36. Borough of Manhattan.

**COMMUNITY BOARD #4M**

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#### 2019-165-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Zev Brachfeld, owner.

SUBJECT – Application June 3, 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); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1375 East 26<sup>th</sup> Street, East side of East 26<sup>th</sup> Street between Avenue M and Avenue N. Block 7662, Lot 14. Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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#### 2019-188-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s USA LLC, owner.

SUBJECT – Application July 12, 2019 - 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.

PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, with frontages on East Gun Hill Road, Tenbroeck Avenue and Pearsall Avenue. Block 4617, Lot 40. Borough of the Bronx.

**COMMUNITY BOARD #11BX**

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# CALENDAR

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**2019-271-BZ**

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless, for 3708 Hylan Boulevard, Corp., owner.  
SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3-A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, property is located on the north side of Mansion Avenue, 174.74' +/- west of the corner formed by the intersection of Mansion Avenue and Fairlawn Street. Block 5190, Lot 85. Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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*Carlo Costanza, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JANUARY 14, 2020  
10:00 A.M.**

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

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## **SPECIAL ORDER CALENDAR**

### **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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of Q.Z.R. § 11-411, that expired on January 12, 2013, and an amendment to the same.

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 23, 2018, August 13, 2019, October 22, 2019, and January 14, 2020, then to decision on that date. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 13, Queens, recommends approval of this application. The Queens Borough President also recommends approval of this application on the condition that the site be maintained graffiti and debris free.

The Premises are located on the southeast corner of Hillside Avenue and 218th Place, in an R2 (C2-2) zoning district, in Queens. The Premises have approximately 100 feet of frontage along Hillside Avenue, 112 feet of frontage along 218th Place, 11,239 square feet of lot area, and are occupied by an existing one-story auto-rental building.

The Board has exercised jurisdiction over the Premises since November 13, 1957, when, under BSA Cal. No. 182-57-BZ, the Board granted a variance, for a term of 15 years, to permit the erection and maintenance of a gasoline service station, auto washing (non-automatic), lubrication, office,

accessory sales and minor auto repairs with hand tools only and with a ground sign, on condition that all buildings and uses be removed and the premises be constructed and arranged as indicated on plans filed with the application; the portion of the premises to be occupied as a gasoline service station be restricted to that portion of the plot within the local retail district; the accessory building be located where shown; there be no cellar under the accessory building; the accessory building be faced with face brick on all sides; the toilet rooms be rearranged so as not to be contiguous; the accessory building comply with the requirements of the Building Code in all other respects; there be no windows or openings in the wall on the side lot line to the east; that along the side and rear lot lines where walls of adjoining buildings do not occur on the lot lines, or walls of the accessory building do not occur, there be erected a masonry wall within the zoning line, where shown, to a total height of not less than 5’-6” and extending along the street line of 218th Place for a distance of approximately 75 feet, as shown; the pumps be of a low approved type erected not nearer than 15 feet to the street building line of Hillside Avenue; the number of gasoline storage tanks not exceed 12 550-gallon approved tanks; curb cuts be restricted to two curb cuts each 30 feet in width to Hillside Avenue and one within the first 25 feet from the intersection of 218th Place, 20 feet in width; signs be restricted to permanent signs attached to the front facade of the accessory building and to the illuminated globes of the pumps excluding all roof signs and temporary signs but permitting the erection within 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 feet; sidewalks and curbing abutting the premises be reconstructed or restored to the satisfaction of the Borough President; the plot within the local retail district where not occupied by accessory building and pumps be paved with concrete or asphaltic pavement; the balance of the plot in the residential district be seeded to grass as proposed and kept in good condition at all times with either the existing woven wire fence on the lot line or a woven wire fence of the chain link type not less than 5’-6” in height on all lot lines to the east, south and west beyond the requirement as heretofore set forth within the zoning line; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; and, all permits be obtained, all work completed and a certificate of occupancy obtained within one year.

On January 21, 1958, under BSA Cal. No. 182-57-BZ, the Board amended the resolution to permit the rearrangement of the pump islands, as shown on plans, on condition that the adjustment in the size of the building may be permitted and the length of the masonry wall may be reduced as shown.

On July 14, 1970, under BSA Cal. No. 182-57-BZ, the Board further amended the resolution to permit modification to the gasoline pumps, as per revised drawings filed with the application, on condition that the underground storage tanks

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be limited as to number, capacity, and location in accordance with the requirements of the Administrative Code, a copy of the resolution, as amended, and a certified copy of the drawings as approved by the Board be permanently posted in the office of this automotive service station; and, other than as amended the resolution be complied with in all respects.

On October 16, 1973, under BSA Cal. No. 182-57-BZ, the Board waived its rules and further amended the resolution to extend the term of the variance for ten years, to expire on October 16, 1983, on condition that the shrubs along portions of the south and west lot lines, the cement coping which is missing along Hillside Avenue and the gasoline pumps be replaced before the certificate of occupancy be issued; the washing or repairing of motor vehicles not be permitted outside the accessory building; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On January 12, 1988, under the subject calendar number, the Board granted a variance, pursuant to Z.R. §§ 11-411 and 11-413, to permit the reestablishment of a gasoline service station with accessory uses, and to legalize a change in use to permit the sale and minor repairs of used cars (Use Group 16) on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term be limited to five years; the owner comply with the conditions set forth in the conditional negative declaration; no repairs take place in the open; the building be kept clean and free of graffiti; there be no barbed wire at a level of less than ten feet above the sidewalk; repairs be limited to minor repairs with hand tools only and for the sole purpose of preparing automobiles for sale; the hours of operation be limited to 8:30 A.M. to 7:00 P.M., Monday through Friday, and 8:30 A.M. to 1:00 P.M., Saturday; all cars for sale or otherwise related to the business be parked on site only; all outdoor lighting be directed down and away from adjacent residences; all signs, flags and banners comply with C2-2 district regulations; landscaping be provided as shown on plans and be adequately maintained at all times and replaced when necessary; access to the landscaped area along the southern lot line be provided only on 218th Place through a three-foot-wide opening with a gate, as per plans; the conditions appear on the certificate of occupancy; the Department of Buildings 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 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 12, 1992.

On June 12, 1990, under the subject calendar number, the Board amended the resolution to legalize a change in the height of a portion of the brick wall, from 5'-6" high to 8'-0" high, to legalize the elimination of the planting strip on 218th Place and along the southerly lot line, and to substitute planting boxes and a planting tub in lieu of a planting strip along 218th Place, substantially as shown on

revised drawings filed with the application.

On September 20, 1994, under the subject calendar number, the Board further amended the resolution to permit a proposed change in use of the premises, from used car sales with minor repairs to car rental establishment with minor repairs and incidental sales, and extended the term for ten years, to expire on January 12, 2003, on condition that auto repairs be accessory to the rental and auto sales; the premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; a new certificate of occupancy be obtained within one year, by September 20, 1995; and, other than as amended, the resolution be complied with in all respects.

On May 25, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term of the variance for 10 years, to expire on January 12, 2013, 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; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; the conditions from all prior BSA resolutions for this site 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 law under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term having expired, the applicant now seeks an extension. 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 Procedures (the "Board's Rules"), of § 1-07.3(b)(3), of the Board's Rules to permit the filing of this application. The applicant also seeks an amendment to reflect interior and exterior changes to the building in connection with a new rental car operator.

Over the course of hearings, the Board raised concerns regarding the site conditions and poor maintenance of the asphalt, landscaping and brick wall. In response, the applicant provided photographs to demonstrate patch striping of the asphalt, plans showing landscaping and dumpster location, and an operational plan. The operational plan commits to the following: security cameras installed to monitor the parking lot as well as the interior office space, operating 24 hours per day, seven days per week; an attendant will monitor both the parking lot and sidewalk area in front of the lot during normal business hours to ensure parking is left available for returning customers and make sure no one is parking on the curb or stopping on the sidewalk as they pull into the lot; in the event this does happen, the cars will be moved immediately; timers are set to provide security lighting on the lot throughout the night; the hours of operation of the location is open Monday

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through Friday, 7:30 a.m. to 6:00 p.m., Saturday 9:00 a.m. to 1:00 p.m., and closed on Sundays; landscaping will be maintained by the tenant or by a hired landscaping service, monthly, or as needed; the maintenance will include keeping the lot free and clean of all trash and keeping weeds down on the premises—this also applies to the buffer zone behind the property; lighting will be provided by the existing fixtures on the premises and will be adjusted throughout the year to turn on before sunset and turn off shortly after sunrise; whenever graffiti is noticed on the property, our policy is to remove it as quickly as possible by painting over it to discourage it from happening again; there is one service bay on the premises wherein we vacuum and wash motor vehicles in preparation for renting to our customers; repairs of any kind are not permitted on site; all maintenance, lubrication, tire changing, oil changing is done off site by third party vendors; all vehicles on the lot are for rent only and not for sale; when motor vehicles are selected to be sold, they are moved offsite to other facilities.

Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated January 12, 1988, as amended through May 25, 2004, so that as amended this portion of the resolution shall read: “*to permit* an extension of term of 10 years, expiring January 12, 2023; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received December 26, 2019-Three (3) sheets; and *on further condition*:

THAT the lot shall be fully resurfaced within three years, by January 14, 2023;

THAT the operational plan shall be fully complied with;

THAT there shall be zero light levels at the lot line;

THAT the premises shall be maintained free of debris and graffiti at all times;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 138-87-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 12, 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, January 14, 2020.

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## 196-15-BZ

APPLICANT – Eric Palatnik, P.C., for Mercer Square LLC, owner; Gab & Aud. Inc., lessee.

SUBJECT – Application October 18, 2019 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (Haven Spa) which expires on October 23, 2019. C6-2 NoHo Historic District.

PREMISES AFFECTED – 250 Mercer Street aka 683 Broadway, Block 535, Lot 7501, 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

## RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy, pursuant to a special permit, granted pursuant to Z.R. §§ 73-36 and 73-03, which expired on October 23, 2019.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

The Premises are bounded by Mercer Street to the east, West 4th Street to the north, Broadway to the west, and West 3rd Street to the south, in a C6-2 zoning district, and in the NoHo Historic District, in Manhattan. The Premises have approximately 209 feet of frontage along each Mercer Street and Broadway, 200 feet of frontage along each West 4th Street and West 3rd Street, 41,800 square feet of lot area and is occupied by an existing 16-story mixed-use residential and commercial building.

The Board has exercised jurisdiction over the Premises since October 23, 2018, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-36 and 73-03, to legalize the operation of a physical culture establishment (“PCE”) on a portion of the first floor (3,593 square feet of floor area), operated as “Haven Spa,” on condition that all work substantially conform to approved plans filed with the application; the term of the PCE grant expire on October 16, 2025; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all services to which licensure by New York State is required (including, but not limited to, massage therapy, esthetics, cosmetology,



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and nail services) be performed by individuals licensed by New York State to perform such respective service; 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, as reviewed and approved by DOB; the existing sprinkler system be maintained as indicated on the Board-approved plans; 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 within the PCE space; minimum three-foot-wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, including from any equipment; a certificate of occupancy be obtained within one year, by October 23, 2019; the conditions appear on the certificate of occupancy; 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, the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant submitted proof of current New York State licenses to perform spa services. The applicant represents that, due to an issue with the architect and contractor, the fire alarm system could be approved and installed, and a certificate of occupancy has thus been delayed.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated October 23, 2018, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to obtain a certificate of occupancy of one year, expiring January 14, 2021; *on condition* that all work and site conditions shall conform to drawings filed with this application; and *on further condition*:

THAT a temporary certificate of occupancy, final certificate of occupancy, or the filing of an application for a certificate of occupancy for the PCE space, also indicating this approval and calendar number (BSA Cal. No. 196-15-BZ) shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 8, 2021;

THAT the term of the PCE grant shall expire on October 16, 2025;

THAT there shall be no change in ownership or operating control of the PCE without prior application to

and approval from the Board;

THAT all services to which licensure by New York State is required (including, but not limited to, massage therapy, esthetics, cosmetology, and nail services) shall be performed by individuals licensed by New York State to perform such respective service;

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; the existing sprinkler system be 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 within the PCE space;

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

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

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

THAT this approval is limited to the relief granted by the Board in response to 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 14, 2020.

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**389-85-BZ**

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

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

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

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to January 28, 2020, at 10 A.M., for continued hearing.  
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# MINUTES

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## **90-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming 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 June 2, 2020, at 10 A.M., for adjourned hearing.  
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## **115-94-BZ**

APPLICANT – Sheldon Lobel, P.C., for Irma Poretsky, 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**

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M., for continued hearing.  
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## **42-97-BZ**

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

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

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

### **COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to February 25, 2020, at 10 A.M., for postponed hearing.  
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## **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 – 76-36 164<sup>th</sup> Street, Block 6848, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for adjourned hearing.  
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## **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**

**ACTION OF THE BOARD** – Laid over to February 25, 2020, at 10 A.M., for postponed hearing.  
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## **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 March 3, 2020, at 10 A.M., for adjourned hearing.  
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# MINUTES

## 23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

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## 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

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 November 30, 2020, at 10 A.M., for decision, hearing closed.

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## 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 approved 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

**ACTION OF THE BOARD** – Laid over to February 25, 2020, at 10 A.M., for continued hearing.

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## APPEALS 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 39<sup>th</sup> Street, Block 869, Lot 25, 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

RESOLUTION –

This is an application, under Z.R. § 11-332, to renew building permits and obtain a certificate of occupancy for a 27-story hotel building in connection with building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 121192253 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which lapsed as a result of such amendment.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, and then to decision on the same date. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood.

The Premises are located on the north side of East 39th Street, between Madison Avenue and Park Avenue, within a C5-3 zoning district and East Midtown Special Subdistrict of the Special Midtown District, in Manhattan. The Premises have approximately 25 feet of frontage along East 39th Street, 99 feet of depth, 2,369 square feet of lot area, and are being developed with a 27-story, with cellar, transient hotel building (“Hotel Building”).

On December 22, 2015, 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 culminating in the issuance of a new-building permit on March 23, 2017. 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 and requires a special permit pursuant to Z.R. § 81-621. 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].” Z. R. § 11-331.

On January 23, 2018, under BSA Cal. No. 2017-264-

# MINUTES

BZY, the Board, pursuant to Z.R. § 11-331, determined that statutory provisions had been met and renewed the New Building Permit, as well as all related permits for various work types, either already issued or necessary to complete construction, and granted an extension of time to permit the completion of the required foundations for one term of six months, expiring August 7, 2018. Because a certificate of occupancy had not been issued within two years of the Effective Date, by August 9, 2019, the building permits authorizing work associated with the New Building Application automatically lapsed again. 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.

The applicant submits that substantial construction has been completed and substantial expenditures toward the completion of the hotel building have been made. Specifically, the applicant submitted a table of construction work hours by trade, demonstrating that 129,441 hours of work had been performed between October 2017 and July 2019, and financial information detailing construction of the hotel building is more than 82 percent complete and approximately \$21.5 million, out of \$26 million, in construction costs have been expended. The applicant represents that the only work to be completed at the Premises involves minor interior work including the installation of lockers and hooks and anticipates requiring less than one year to complete construction and obtain a certificate of occupancy.

Accordingly, the Board finds that that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit and 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 Z.R. § 11-332, to renew building permits and obtain a certificate of occupancy for a 27-story Hotel Building, issued by the Department of Buildings, acting on New Building Application No. 121192253, 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 and six months, expiring November 8, 2021, or such later date authorized by Emergency Executive Order No. 110 (April 29, 2020) 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.

Adopted by the Board of Standards and Appeals, January 14, 2020.

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## 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 March 17, 2020, at 10 A.M., for postponed hearing.

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## 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 February 11, 2020, at 10 A.M., for continued hearing.

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## 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

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE –

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

Adopted by the Board of Standards and Appeals, January 14, 2020.

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# MINUTES

## 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** – 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

## RESOLUTION –

### THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 12, 2018, acting on Department of Buildings Alteration Type I Application No. 321733095, reads in pertinent part:

The proposed change from 2-family to 1-family and enlargement of the existing building in an R5 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 side yards by not meeting minimum requirements of section 23-461(a) & 23-48 of the zoning resolution;
3. Creates non-compliance with respect to the rear yards by not meeting minimum requirements of section 23-47 of the zoning resolution.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R5 zoning district and in the Special Ocean Parkway District, the enlargement and conversion of an existing two-story plus cellar two-family detached residence that does not comply with zoning regulations for side yards and rear yards contrary to Z.R. §§ 23-461(a), and 23-47.

A public hearing was held on this application on September 10, 2019, after due notice by publication in *The City Record*, with continued hearings on October 29, 2019, and January 14, 2020, and then to decision on that date. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the east side of Ocean Parkway, between Avenue T and Avenue U, within an R5 zoning district and in the Special Ocean Parkway District, in Brooklyn. The Premises have approximately 25 feet of

frontage along Ocean Parkway, 125 feet of depth, 3,125 square feet of lot area and is occupied by an existing two-story plus cellar two-family detached residence.

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

The existing two-family residence is a two-story plus cellar detached residence with two side yards with widths of 0’-4-3/4” and 4’-10-3/4”, and a rear yard with a depth of 27’-10”. The applicant proposes to convert and horizontally enlarge the two-family detached residence resulting in a three-story plus cellar single-family detached residence with two side yards with widths of 0’-4-3/4” and 4’-10-3/4”, and a rear yard with a depth of 21 feet at the first floor and 25 feet above. At the Premises, two side yards, each with minimum widths of 5 feet and a minimum of 10 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-461, 23-48, and 23-47.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences on the subject block, demonstrating that 16 interior lots (43 percent) have rear yards with depths less than 30 feet, ranging from 13 feet to 29 feet, and 3 lots have rear yards with a depth of less than 21 feet, including the dwelling adjacent to the Premises which has a rear yard with a depth of 20 feet. The proposed enlargement includes an extension of the existing non-complying side yards, and, pursuant to a 1930 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yards predate the 1961 Zoning Resolution and are legal non-compliances.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged and converted will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist

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No. 19BSA059K, dated November 13, 2018.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement and conversion of an existing two-story plus cellar two-family detached residence that does not comply with zoning regulations for side yards and rear yards contrary to Z.R. §§ 23-461 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 8, 2020”-Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard with minimum depths of 21’-0” at the first floor and 25 feet above, as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT 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. 2018-177-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 October 30, 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, January 14, 2020.

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## 2019-178-BZ

### CEQR #19-BSA-015K

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 24<sup>th</sup> Street, Block 7677, Lot 30, 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

RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 30, 2019, acting on Department of Buildings Alteration Type I Application No. 321386068, reads in pertinent part:

- 1- Proposed plans are contrary to Z.R. 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
- 2- Proposed plans are contrary to Z.R. 23-141 in that the proposed open space ratio (OSR) is less than the required 150%;
- 3- Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30’-0”.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), and rear yards contrary to Z.R. §§ 23-141 and 23-47.

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 January 14, 2020, and then to decision on that date. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board was also in receipt of two form letters in support of this application.

The Premises are located on the west side of East 24th Street, between Avenue N and Olean Street, within an R2 zoning district, in Brooklyn. The Premises have approximately 35 feet of frontage along East 24th Street, 100 feet of depth, 3,500 square feet of lot area and is occupied by an existing two-story plus cellar single-family detached residence.

The Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a

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# MINUTES

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designated area in which the subject special permit is available. The Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story plus cellar detached residence with 0.51 FAR (1,791 square feet of floor area), 134% OSR (2,406 square feet of open space), and a rear yard with a depth of 31'-10". The applicant proposes to vertically and horizontally enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 0.99 FAR (3,461 square feet of floor area), 61% OSR (2,106 square feet of open space), and a rear yard with a depth of 20 feet at the first floor, 25 feet at the second floor, and 30 feet above.

At the Premises, a maximum of 0.5 FAR (1,750 square feet of floor area) is permitted, a minimum of 150% OSR (2,625 square feet of open space, assuming a complying FAR of 0.5) is required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-141 and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 1,094 square feet to 1,394 square feet, the second floor, from 697 square feet to 1,308 square feet, and create a third floor with 759 square feet of floor area.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R2 zoning district (the "Study Area"), finding that, of the 54 qualifying residences, 32 residences (59 percent) have an FAR greater than 0.5, ranging from 0.51 to 0.97. With regard to the open space ratio, the applicant submitted a lot coverage study, demonstrating that 38 lots (70 percent) within the Study Area have a lot coverage 35 percent or greater and, of those lots, 63 percent have a lot coverage of 40 percent or greater. The applicant submitted a rear yard study demonstrating that, on the subject block, 13 interior lots (77 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 6 feet, and 5 lots have rear yards with a depth of 20 feet or less, including the lot adjacent to the south of the Premises.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist

No. 19-BSA-015K, dated January 20, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 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"), and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 14, 2020-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.99 FAR (3,461 square feet of floor area), a minimum of 61% OSR (2,106 square feet of open space), and a rear yard with minimum depths of 20 feet at the first floor, 25 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. 2018-178-BZ"), shall be obtained within four years, by January 14, 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, January 14, 2020.

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# MINUTES

## 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 54<sup>th</sup> Street aka 5401 3<sup>rd</sup> Avenue, Block 822, Lot 11, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Laid over to April 7, 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 April 7, 2020, at 10 A.M. for adjourned 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 14<sup>th</sup> Street, Block 7373, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 28, 2020, at 10 A.M. for continued hearing.

## REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 14, 2020

1:00 P.M.

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

## ZONING CALENDAR

### 2019-169-BZ

#### CEQR #19-BSA-145R

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 Sharrots Road, Block 7400, Lot 50, 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

RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 22, 2019, acting on DOB Alteration New Building Application No. 520247377, reads in pertinent part:

“The proposed partial use of the subject property as a physical culture establishment located in an M1-1 Zoning District within the Special South Richmond Development District requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36.”

This is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-1 zoning district and in the Special South Richmond Development District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and mezzanine of an existing one-story plus cellar and mezzanine mixed-use manufacturing and commercial building, contrary to ZR § 42-10.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Community Board 3, Staten Island, recommends approval of this application. The Board was also in receipt of one form letter in support of this application.

The subject site is located on the south side of Sharrots Road west of the intersection of Sharrots Road



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# MINUTES

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and Arthur Kill Road, within an M1-1 zoning district and in Special South Richmond Development District, on Staten Island.

The site has approximately 159 feet of frontage along Sharrotts Road, an irregular depth, 63,635 square feet of lot area and is occupied by an existing one-story plus cellar and mezzanine mixed-use manufacturing and commercial building.

The Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 223-15-A, the Board granted a waiver of Section 36 of the General City Law on condition that construction substantially conform to the drawing filed with the application; the proposal comply with all applicable zoning district requirements; all other applicable laws, rules, and regulations be complied with; the approval be limited to the relief granted by the Board in response to objections cited and filed by the DOB; the building be fully sprinklered; roadway dimensions and layout be in accordance with the FDNY stamped plan; a hydrant be installed at the south termination of the cul-de-sac; a plan be filed with FDNY indicating that the main front entrance is fronting the Fire Department Access Road and a 30' x 30' frontage space is provided at that entrance; a plan indicating the location of any required Siamese connections be filed with FDNY; any Siamese connections provided be within 100 feet of a working hydrant; the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03. 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. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 4,240 square feet of floor area on a portion of the first floor with areas for reception, climbing area, and restrooms; and 1,844 square feet of floor area on the mezzanine with additional climbing areas. The PCE began operation October 2017, as "Rock 'Em Extreme," and is open Monday, 1:00 p.m. to 7:00 p.m., Tuesday through Thursday from 1:00 p.m. to 9:00 p.m., Friday from 12:00 p.m. to 10:00 p.m., and Saturday and Sunday, from 10:00 a.m. to 8:00 p.m. The applicant states that the no noise issues are anticipated

because the PCE is located in a commercial and manufacturing building, containing contractors' establishments, and only low-level ambient music is played. 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 completely enclosed building within an area characterized by other commercial uses. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will provide a desirable use for the community.

The applicant represents that a fire alarm system and sprinkler system are maintained within the PCE space. By letter dated January 13, 2020, the Fire Department states that these premises are protected by fire suppression systems (standpipe and sprinkler) and a fire alarm system; the systems have been tested satisfactorily and witnessed by members of Fire Prevention; the Fire Department's Licensed Public Place of Assembly have inspected these premises and issued a violation order to obtain a certificate of operation from the Department of Buildings; 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. Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community.

In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project. 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. The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 19BSA145R, dated June 10, 2019. The term of the special permit has been reduced to reflect the period of time the PCE operated without Board approval. Based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the 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 Negative determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of

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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 M1-1 zoning district, the operation of a proposed physical culture establishment on a portion of the first floor and mezzanine of an existing one-story plus cellar and mezzanine mixed-use manufacturing and commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 14, 2020”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 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 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 fire alarm system and 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. 2019-169-BZ”), shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 12, 2021;

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 14, 2020.

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## **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 28, 2020, at 10 A.M. for postponed hearing.

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## **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**

**ACTION OF THE BOARD** – Laid over to February 4, 2020, at 10 A.M. for continued hearing.

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## **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**

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M. for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 4-5

February 7, 2020

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## DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
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406-82-BZ	2411 86 <sup>th</sup> Street, Brooklyn
429-29-BZ	4801 Kings Highway, Brooklyn
389-85-BZ	2090 Bronxdale Avenue, Bronx
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2017-317-BZ	1693 Flatbush Avenue, Brooklyn
2018-91-BZ	78-80 Leonard Street, aka 79 Worth Street, Manhattan
2019-24-BZ	2721 Nostrand Avenue, Brooklyn
2019-65-BZ	373 Avenue W, Brooklyn
2019-203-BZ	144-43 Farmers Boulevard, Queens
2019-269-BZ	3425 Rombouts Avenue, Bronx

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# DOCKETS

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New Case Filed Up to January 28, 2020  
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**2020-10-BZ**

609 Jarvis Avenue, Block 15595, Lot(s) 0025, Borough of **Queens, Community Board: 14.**  
Special Permit (§73-621) to permit the enlargement of an existing single-family residence  
contrary to ZR §23-142 (Floor Area Ratio). R4-1 zoning district. R4-1 district.  
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**2020-11-A**

301 Park Avenue, Block 1304, Lot(s) 1001-1004, Borough of **Manhattan, Community  
Board: 5.** Appeal of a New York City Department of Buildings determination. C6-6, C5-  
2.5, C5-3 district.  
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**2020-12-BZ**

356 Wythe Avenue, Block 2415, Lot(s) 0022, Borough of **Brooklyn, Community Board: 1.**  
Special Permit (§73-36) to permit the operation of a physical cultural establishment (Row  
House Williamsburg) located in the cellar and a portion of the first floor of an existing  
building contrary to ZR §42-10. M1-4/R6-A & MX-8 zoning districts. M1-4/R6-A, MX-8  
district.  
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**2020-13-BZ**

71 Smith Street, Block 00170, Lot(s) 7501, Borough of **Brooklyn, Community Board: 2.**  
Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45)  
located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-1  
zoning district. C6-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings,  
Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings,  
Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building,  
The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING FEBRUARY 11, 2020, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 11, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDERED CALENDAR**

### 16-36-BZ

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

SUBJECT – Application February 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (BP) with accessory uses which expired on November 1, 2017; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue aka 1301 White Plains Road, Block 3880, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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### 4-00-BZ

APPLICANT – Eric Palatnik, P.C., for 243 West 30<sup>th</sup> Street Realty LLC, owner; West Garden Inc., lessee.

SUBJECT – Application August 9, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (West Garden) which expires on May 30, 2020. M1-5 zoning district.

PREMISES AFFECTED – 243 West 30<sup>th</sup> Street, Block 780, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 185-13-BZ

APPLICANT – Eric Palatnik, P.C., for 97 Franklin Avenue, LLC, owner.

SUBJECT – Application December 20, 2019 – Extension of Time to Complete Construction of a previously approved Variance (72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00) which expired on February 10, 2019; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Block 899, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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### 62-15-BZ

APPLICANT – Glen V. Cutrona, AIA, for 139 Bay Street Point, LLC, owner.

SUBJECT – Application December 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a residential conversion and enlargement of a two-story commercial building which expires on January 12, 2020.

PREMISES AFFECTED – 139 Bay Street, Block 1, Lot(s) 10, 17, 198, 19, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### 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**

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### 2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application November 6, 2019 – Amendment of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home contrary to the previous Board approval. R2 zoning district.

PREMISES AFFECTED – 1367 East 24<sup>th</sup> Street, Block 7660, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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## APPEALS CALENDAR

### 2019-199-A

APPLICANT – Stuart Goode c/o Charles Weinstock, for 1039-1045 Madison Avenue Owner LLC c/o Naftali Group, owner.

SUBJECT – Application July 26, 2019 – 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.

PREMISES AFFECTED – 1045 Madison Avenue, Block 1491, Lot 151, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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# CALENDAR

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## REGULAR MEETING FEBRUARY 11, 2020, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 11, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**ZONING CALENDAR**

### 2018-146-BZ

APPLICANT – Eric Palatnik, P.C., for Yehoshua Augenbaum, owner.  
SUBJECT – Application September 7, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (FAR, Lot Coverage and Open Space); ZR §23-621(b) (Perimeter Wall Height); ZR §23-47 (Rear Yard) and ZR §23-461 (Side Yard). R2 zoning district.  
PREMISES AFFECTED – 1315 East 24<sup>th</sup> Street, Block 7660, Lot 39, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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### 2019-72-BZ

APPLICANT – Kenneth K. Lowenstein, for Extell 4110 LLC, owner; TFC Partners Inc. dba NFC Amenity Management, lessee.  
SUBJECT – Application April 8, 2019 – 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).  
PREMISES AFFECTED – 555 Tenth Avenue, Block 1069, Lot(s) 1001-1005, Borough of Manhattan.  
**COMMUNITY BOARD #4M**

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### 2019-183-BZ

APPLICANT – Eric Palatnik, P.C., for AR Global, owner; Amy Zhou, lessee.  
SUBJECT – Application July 1, 2019 – 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.  
PREMISES AFFECTED – 200 West 41 Street, Block 1012, Lot 7502, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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### 2019-254-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Red Hook Lane LLC, owner.  
SUBJECT – Application September 3, 2019 – 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).  
PREMISES AFFECTED – 415 Red Hook Lane, Block 00154, Lot 7501, Borough of Brooklyn.  
**COMMUNITY BOARD #2BK**

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### 2019-268-BZ

APPLICANT – Sheldon Lobel, P.C., for 1937 Coney Island LLC, owner.  
SUBJECT – Application September 23, 2019 – 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.  
PREMISES AFFECTED – 1938 Coney Island Avenue, Block 6617, Lot 0045, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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### 2020-15-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery, for Pavel Levter, owner.  
SUBJECT – Application January 31, 2020 – 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 – 787 Patterson Avenue, Block 3810, Lot 37, Borough of Staten Island.  
**COMMUNITY BOARD #2SI**

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*Carlo Costanza, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JANUARY 28, 2020  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**418-50-BZ**

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application September 12, 2017 – Compliance Hearing.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Compliance hearing closed.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

An application was filed to amend a variance, previously granted by the Board. A public hearing was held on May 2, 2017, after due notice by publication in *The City Record*, and was then withdrawn by the applicant on September 12, 2017.

The Board initiated this compliance hearing based on evidence of noncompliance with the Board’s grant gleaned from the amendment application that showed non-compliance with the Board’s conditions regarding the installation and maintenance of a planted area with fencing.

A public hearing was held on November 21, 2017, with continued hearings on February 27, 2018, June 5, 2018, November 20, 2018, July 16, 2019, and January 28, 2020, and closed by the Board on that same date. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood.

The premises are comprised of four tax lots that are bounded by 73rd Avenue to the north, Springfield Boulevard to the east, and 217th Street to the west, within an R3-2 zoning district, in Queens.

The Board has exercised jurisdiction over the premises since July 25, 1950, when, under the subject calendar number, the Board granted a variance to permit the erection of more than one building on a lot, without the required yards and courts, to permit the parking of motor vehicles belonging to the residents of the proposed buildings on open portions of the plot, provided such parking areas be properly surfaced and maintained at all times in neat condition, to

permit the arrangement of buildings and entire premises substantially as proposed and as indicated, provided the coverage of the entire plot not exceed the percentage as proposed and in addition that the area to the south, as indicated on such plan, be maintained unbuilt upon, as proposed and be fenced along the lot lines to the south, east and west, and regraded as may be necessary to provide good drainage and landscaped appearance; the area be planted for a depth of 100 feet from the southerly line with grass, trees, and shrubs and existing trees be retained where possible; a chain link fence along the lot lines of this portion of the premises be erected on a masonry base for a total height of not less than five feet; the planting in the area be suitable and be maintained at all times in good condition; an additional 50 feet of similar planting be maintained except where residential buildings, garages, and parking areas are shown; there be no playground or picnic grounds and no benches or similar facilities within the strip 100 feet in width adjoining the southerly lot line; the driveway as shown from 217th Street, within the 100-foot landscaped area, may, however, be constructed, provided the driveway be properly fenced and screened with planting so as to preclude the parking or storage of motor vehicles on any portion of the space at the south between the existing driveways, garages, and buildings within 150 feet from such southerly lot line; in all other respects the buildings and occupancy comply with all laws, rules and regulations applicable thereto, other than as modified the same day under BSA Cal. No. 419-50-A, all permits be obtained and all work completed within one year, by July 25, 1951.

On that same day, under BSA Cal. No. 419-50-A, the Board granted a waiver of General City Law § 36 to permit the construction of buildings not fronting on mapped streets on condition that where the buildings do not face on legal streets as established by the Board of Estimate, there be paths of adequate width maintained from the entrances of such buildings to a legal street; where garages occur in the dwellings the building not exceed two stories in height except for the garage at the rear; walls separating the residential units continue to the underneath side of the roof boards and be properly slushed against same; the buildings as proposed may be constructed as indicated on condition that they be constructed of an assembly of approved materials in view of component parts being substantially of Class 3 construction; in all other respects the buildings and occupancy comply with all laws, rules, and regulations applicable thereto, other than as modified the same day under BSA Cal. No. 418-50-BZ.

Neighbors submitted to the Board statements and photographs alleging that the greenspace buffer zone had not been installed or maintained, and that the areas to be kept open had been built upon.

In response to the evidence of noncompliance with the Board’s grant, the applicant demonstrated substantial progress in restoring the premises to their Board-approved condition. For instance, the applicant provided records and testimony detailing attempts at contracting landscapers and fence installers and photographs demonstrating the cleanup



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of the area to be landscaped.

In response to requests from the Board for assurances that the buffer zone would continue to be maintained in first-class condition, the applicant furnished a signed contract with a landscaping company, a proposal to increase the buffer zone, photographs of the buffer zone with debris removed, and the applicant proposes to install the requisite fence once the landscaping is completed.

The Board received no further testimony raising concerns about the premises' continued compliance with the Board's grant.

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.

Adopted by the Board of Standards and Appeals, January 28, 2020.

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## 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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures, an amendment, and an extension of term of a variance, previously granted by the Board, that expired on March 23, 2016, and an extension of time to obtain a certificate of occupancy, which expired on April 1, 2009.

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 November 19, 2019 and January 28, 2020, and then to decision on that date. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 2, Staten Island, waived its recommendation of this application.

The Premises are located on the northwest corner of

New Dorp Lane and New Dorp Plaza, partially within an R3-1 (C2-1) zoning district and partially within an R3X zoning district, on Staten Island. The Premises have approximately 102 feet of frontage along New Dorp Lane, 109 feet of frontage along New Dorp Plaza, 31 feet of frontage along Cloister Place, 12,930 square feet of lot area, and are occupied by an existing gasoline service station and accessory building (1,884 square feet of floor area).

The Board has exercised jurisdiction over the Premises since February 21, 1961, when, under the subject calendar number, the Board granted a variance, for term of 15 years, expiring on February 21, 1976, to permit the erection and maintenance of a modern gasoline service station, lubricatorium, car washing, minor motor vehicle repairs with hand tools only, sale of accessories, and parking for more than five motor vehicles awaiting service, and illuminated free standing sign, on condition that the work conform to drawings filed with the application, with the exception that the jog at the northwest corner of the lot, which extends into the residence use district, be seeded and planted as a grass plot with a concrete curb 12 inches high above grade level separating it from the remainder of the plot; 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 year.

On July 5, 1961, under the subject calendar number, the Board amended the variance to permit the gasoline service station to be redesigned and constructed substantially as shown on the revised drawings submitted with the application, with the exception that the jog at the northwest corner of the lot, which extends into the residence use district be seeded and planted as a grass plot with a concrete curb 12 inches above grade level separating it from the remainder of the plot, and the planted area be carried along the westerly lot line, two feet wide, to New Dorp Lane, on condition that other than as amended, the resolution be complied with in all respects.

On April 29, 1975, under the subject calendar number, the Board further the amended the variance to amend the location of the gasoline pumps as per revised drawings filed with the application on condition that other than as amended the resolution be complied with in all respects.

On March 23, 1976, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on March 23, 1986, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained.

On September 16, 1986, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire March 23, 1996, on condition that there be no parking of the vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; all landscaping be adequately maintained and replaced when necessary; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by September 16, 1987.

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On July 21, 1998, under the subject calendar number, the Board further amended the variance to permit the installation of a 59' x 28' metal canopy over the two existing concrete pump islands and alteration to the existing accessory building to create an attendant's area and to extend the term, on condition that the term of the variance be limited to ten years, to expire on March 23, 2006; the landscaped areas be adequately maintained and be clean of debris at all times; the walls, fencing, site lighting and signs be maintained in accordance with the BSA-approved plans; all repair work be conducted within the accessory building; parking on the site be limited to cars awaiting service with no parking allowed on the sidewalks; there be no parking of trucks at the site; no sales of vehicles be conducted at the site; the premises be maintained free 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; substantial construction be completed and a new certificate of occupancy be obtained within 24 months, by July 21, 2000.

On April 1, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to permit an additional pump island and to extend the term for ten years, to expire on March 23, 2016, 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 per the BSA-approved plans; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by April 1, 2009; 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)/configuration(s) not related to the relief granted.

The term having expired March 23, 2016, and the time to obtain a certificate of occupancy having expired April 1, 2009, the applicant now seeks an extension. 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. Pursuant to Z.R. § 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.

The applicant also requests an amendment, pursuant to Z.R. § 11-412, to permit the enlargement of the accessory building by 716 square feet. Z.R. § 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." The applicant submitted a 1958 survey of the premises demonstrating that the use occupied 1,884 square feet of floor area on December 1961 and the enlargement of 716 square feet increases the floor area by less than 50 percent and complies with Z.R. § 11-412.

By letter dated May 8, 2019, the Fire Department objected to the application and stated that, in the area adjacent to the motor vehicle repair shop and in a blue canopy and tarp enclosure, the area was converted into an automobile repair shop, a permanent car lift was installed, a gas fired space heater was installed, a 250-gallon waste oil tank was placed in the enclosure, tire racks are installed and hold approximately 15-20 tires, numerous barrels of unidentified liquids are stored in the enclosure, the plans submitted do not show the adjacent commercial building correctly—the building extends to the rear lot line—as the blue tarp enclosure abuts the commercial building and in the event of a fire, it can spread to the commercial building. By letter dated May 18, 2019, the Fire Department stated that a Fire Department inspector visited the site and issued violations for failing to provide "NO SMOKING" signage and providing tire storage under the canopy, accumulation of garbage and auto parts located under the canopy, missing approved-type of metal cap used for oil storage, tire storage within ten feet from the ceiling suspended gas meter, and failure to obtain a Fire Department permit to maintain or operate MVRS contrary to Fire Code 105.6.

Over the course of hearings, the Board raised concerns regarding the presence of an area enclosed by a tarp used as an additional repair bay, as well as site conditions, including landscaping, maneuverability, high light levels, and dumpster location. In response, the applicant provided revised plans, proposing to enclose the additional repair bay area with masonry with two-hour rated construction and demonstrated sufficient landscaping detail, maneuverability that will only impact one space that is used for vehicle staging and repair, revised light levels, and relocated the dumpster.

By letter dated January 25, 2020, the Fire Department states that it has reviewed the amended proposed plans for the Premises dated October 22, 2019, which show the exterior wall of the proposed one story building expansion, along with the sites property line and has no further objection to the application and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amend* the resolution, dated July 5, 1961, as amended through April 1, 2008, so that as amended this portion of the resolution shall read: "to *permit* an extension

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of term of ten years, expiring March 23, 2026, extension of time to obtain a certificate of occupancy, and amendment, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "January 17, 2020"- Eight (8) sheets; and *on further condition*:

THAT the site be maintained free of debris and graffiti;

THAT all landscaping be planted and maintained per the BSA-approved plans;

THAT the walls, fencing, site lighting and signs be maintained in accordance with the BSA-approved plans;

THAT all repair work be conducted within the accessory building parking on the site be limited to cars awaiting service with no parking allowed on the sidewalks;

THAT there be no parking of trucks at the site;

THAT no sales of vehicles be conducted at the 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. 751-60-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 February 12, 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, January 28, 2020.

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## 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 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures and an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-243, which permitted the operation of an accessory drive-through to an eating and drinking establishment and expired on February 11, 2019.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 11, Brooklyn, recommends approval of this application subject to the following conditions: the sound from the speakers not exceed 7 decibels over ambient sound or the maximum of 30 decibels; the applicant enclose the site's trash; the parking lot be gated-off when the restaurant is closed; and, the drive-through close at 11:00 p.m.

The Premises are located on the northeast corner of 86th Street and 24th Avenue, in a C1-3 (R5) zoning district, in Brooklyn. The Premises have approximately 200 feet of frontage along 86th Street, 100 feet of frontage along 24th Avenue, 20,000 square feet of lot area, and are occupied by an existing two-story eating and drinking establishment (Use Group 6), operated as McDonald's, with accessory drive-through.

The Board has exercised jurisdiction over the Premises since January 18, 1983, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-243, to permit the installation and use of an accessory drive-through facility on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term be for five years, to expire on January 18, 1988; the loudspeaker on the menu board be operated at a decibel level which will not disturb adjoining residences at any time; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within four years. On May 3, 1988, under the subject calendar number, the Board amended the special permit to extend the term for five years, to expire on January 18, 1993. On October 5, 1993, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 1998, on further condition that a new certificate of occupancy be obtained within one year, by October 5, 1994. On March 14, 2000, under the subject calendar number, the Board further amended the special permit to permit the addition of a window to the drive through and extend the term for five years, to expire on January 18, 2003, on condition that the left turn signal at 24th Avenue be eliminated; the premises be kept clean of debris and graffiti; the drive-through only operate until 12:00 a.m. and the parking lot be closed after business hours; the premises

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be maintained in substantial compliance with plans filed with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by March 14, 2001. On April 29, 2003, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 2008, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings (“DOB”)/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. On July 22, 2008, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 2013, and to extend the time to obtain a certificate of occupancy for six months, by January 22, 2009, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the conditions and all conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by January 22, 2009; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. On May 3, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the special permit to extend the time to obtain a certificate of occupancy for one year, by May 3, 2012. On September 11, 2012, under the subject calendar number, the Board further amended the special permit to extend the time to obtain a certificate of occupancy for one year, by September 11, 2013. On February 11, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the special permit to extend the term for five years, to expire on February 11, 2019, and extend the time to obtain a certificate of occupancy for six months, by August 11, 2014, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the grant expire on February 11, 2019; signage comply with the C1 district regulations; directional signage be limited to a total of 12 square feet, per the Z.R. § 12-10 definition of “sign”; the conditions and all relevant conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by August 11, 2014; all conditions from the prior resolution not specifically waived by the

Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. The applicant represents that the Premises continues to operate as “McDonalds,” and the accessory drive-through operates daily, from 6:00 a.m. to 12:00 a.m.

In response to concerns of the Community Board, the Board also raised concerns regarding the hours of operation of the drive-through and condition the approval of the operation of the accessory drive-through not to exceed 6:00 a.m. to 11:00 p.m., daily.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated January 18, 1983, as amended through February 11, 2014, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for five years, expiring February 11, 2024, *on condition*:

THAT the term of the special permit shall expire on February 11, 2024;

THAT the hours of operation of the accessory drive-through shall be limited to 6:00 a.m. to 11:00 p.m., daily;

THAT signage shall comply with C1 district regulations;

THAT directional signage shall be limited to a total of 12 square feet, per the Z.R. § 12-10 definition of “sign”;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 406-82-BZ”), shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 11, 2021;

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

THAT this approval is limited to the relief granted by

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the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2020.

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## 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 April 21, 2020, at 10 A.M., for continued hearing.

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## 389-85-BZ

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

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

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

## COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to June 30, 2020, at 10 A.M., for continued hearing.

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## 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 86<sup>th</sup> Street, Block 1531, Lot 40, Borough of Manhattan.

## COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for postponed hearing.

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## 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

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M., for continued hearing.

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## 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

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 2019-94-A

APPLICANT – Landmark West, for West 66<sup>th</sup> 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 66<sup>th</sup> Street aka 50 West 66<sup>th</sup> Street, Block 1118, Lot 45, Borough of Manhattan.

## COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE –

Affirmative:           Commissioner           Sheta           and  
Commissioner Scibetta.....2

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Negative: Chair Perlmutter and Vice-Chair Chanda.....2  
Recused: Commissioner Ottley-Brown.....1  
THE RESOLUTION –

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.

This is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or the “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of Landmark West! (“Appellant”), alleging errors in the Permit pertaining to 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.

For the reasons that follow, the Board denies this appeal.

## I.

The Premises are 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. They have 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 are occupied by a two-story building and the New Building, which is under construction.

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, Z.R. § 12-10.

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. On April 11, 2019, DOB reissued the Permit, as amended, authorizing the taller New Building on a larger zoning lot.

Appellant and the City Club of New York and certain members (collectively, “Appellants”) commenced appeals in May 2019 under BSA Calendar No. 2019-94-A and under BSA Calendar No. 2109-89-A, challenging the Permit.

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.

Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding

neighborhood.

## II.

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, as to two issues initially presented. These two initial issues were: (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 Z.R. § 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 Z.R. § 82-34.

On the other hand, as discussed at hearing, a timely third issue had not been presented by Appellants regarding whether the amount of floor space used for mechanical equipment in the New Building would be excessive or irregular, and Appellants’ discussion of mechanical space in the New Building in their initial filings instead centered 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 found 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 continued hearings.

The Board also notes its wide discretion to consider interpretive appeals based on the totality of the circumstances. Here, the final determination that forms the basis for DOB’s final determination is the Permit—not a specific written determination. As noted above, the Board also heard testimony from DOB that Appellant might be forever foreclosed from receiving a final determination on this third issue. The Board further notes that this third issue is directly related to the two issues already decided, as presaged by the Board’s consideration of *15 East 30th Street*. As the Board’s consideration of this third issue is at its discretion, the Board also notes that Appellant raised this issue early in the hearing process—mollifying any concern that consideration of this issue might amount to a fishing expedition, especially given that courts (at their own discretion) routinely allow petitioners to amend petitions. Lastly, the Board notes that the City Charter, the Zoning Resolution, and the Board’s rules are silent to this specific issue, and nothing in the record indicates the Owner has been prejudiced by such review.

Accordingly, on September 17, 2019, the Board reopened the appeal filed by Appellant under BSA Calendar No. 2019-94-A to receive additional testimony only with respect to this third issue, which had not yet been decided.

The initial resolution, deciding the first two issues and setting forth the Board’s vote to reopen, was issued on October 15, 2019.

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A continued hearing was held on December 17, 2019, and then to decision on January 28, 2020.

### III.

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, Z.R. § 72-11. 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*.

As discussed herein, the Board finds that (A) Appellant has not demonstrated that the architectural and mechanical plans for the New Building show insufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions. In reaching this decision, the Board has considered (B) the alternate position of two commissioners as well as (C) all of the parties’ arguments on appeal, including those summarized below.

#### A.

The Zoning Resolution defines “floor area” as “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*.” Z.R. § 12-10 (emphasis in original indicating defined terms). However, the Zoning Resolution also provides for certain deductions from floor area. At issue in this appeal is the following deduction: “the *floor area* of a *building* shall not include . . . floor space used for mechanical equipment.” *Id.*

More particularly, the Board has considered 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. Appellant disputes these deductions, but the Board is ultimately unpersuaded.

Notably, consistent with its decision in *15 East 30th Street*, the Board has reviewed the record in its entirety, including expert testimony and plans for the New Building. This independent review reveals that the composite mechanical plans prepared by the Owner and submitted by DOB are overinclusive in the impression they impart about the amount of mechanical equipment within the New Building. For instance, because of the three-dimensional nature of the mechanical floors, much of the ductwork depicted in the composite plans’ flattened view might have no relation to “floor space”—where, for instance, a duct is situated immediately adjacent to a ceiling.

However, the New Building’s mechanical plans do demonstrate sufficient floor-based mechanical equipment. Much of this equipment sits directly on the floor or directly on pads—indisputably representing “floor space used for mechanical equipment”—and because of the nature of mechanical equipment, these pieces require clearance and service areas that further justify the New Building’s floor-area deductions.

Furthermore, the Board notes that DOB’s mechanical engineers have reviewed the New Building’s drawings.

Although the exact scope of this review is unclear from the record with respect to the Zoning Resolution, it is apparent from the mechanical plans themselves that this lack of clarity in DOB’s procedures is an insufficient basis upon which to grant this appeal. (To do otherwise would be to venture into speculation that DOB is not performing its function in administering and enforcing the Zoning Resolution and—more importantly—would fall outside the ambit of this interpretive appeal, in which the Board strictly interprets and applies zoning provisions.)

Under DOB’s current practices, it is clear that DOB has acted reasonably in reviewing and approving the New Building’s mechanical plans. Notably, expert testimony provided by the Owner demonstrates that other similar buildings contain 12 mechanical floors, whereas the New Building contains 4—well within the range of standard practices for constructing buildings of this scale. The Owner’s reliance on DOB’s practices is similarly reasonable and reflected in the mechanical drawings showing sufficient mechanical equipment to justify the New Building’s floor-area deductions.

Accordingly, with respect to this specific case, the Board finds that Appellant has not demonstrated that the architectural and mechanical plans for the New Building show insufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions.

#### B.

The Board’s Rules provide that all types of applications—including interpretive appeals—must receive a “concurring vote of at least three (3) commissioners” to be granted. *See* Rules § 1-11.5; *see also id.* § 1-12.5. However, if an interpretive appeal “fails to receive the requisite three (3) votes,” it is “deemed a denial.” *Id.* Here, two commissioners voted to grant this interpretive appeal, and two commissioners voted to deny this interpretive appeal. Accordingly, this interpretive appeal has not garnered the three affirmative votes necessary to grant, and the Board’s decision is deemed a denial.

In reaching its decision denying this interpretive appeal, the Board has considered but ultimately declines to follow the alternate positions of the two commissioners that would grant this appeal. As explained at hearing, the commissioners in favor of this interpretive appeal find Appellant’s testimony and evidence credible and DOB and the Owner’s unpersuasive.

One commissioner expresses concern that DOB has not provided adequate explanation on its procedures for determining whether certain mechanical equipment is sufficient to allow mechanical-equipment deductions from floor area under the Zoning Resolution; rather, it seems that there may be no procedure in place for analyzing mechanical equipment under the Zoning Resolution. Further, said commissioner expressed fairness concerns in the disparate scrutiny DOB appears to apply to small projects, such as single-family residences, versus tall towers, like the New Building. Next, this commissioner notes the conflicting expert testimony in the record about

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the location of mechanical equipment and the absence—in his view—of any adequate justification for the placement of mechanical equipment (structural or otherwise) that would lead to the conclusion that the New Building’s mechanical equipment could be justified. Accordingly, this commissioner would grant this appeal.

The second commissioner expresses similar concerns, finding that the New Building’s floor-area deductions cannot be justified. In interpreting the words “floor space used for mechanical equipment,” Z.R. § 12-10 (“floor area” definition), this commissioner would note that the space is what the mechanical equipment reasonably requires, that the space is exclusively devoted to housing mechanical equipment, that the space has no other use, and that the space cannot be realistically occupied for purposes other than housing the servicing of said equipment. This commissioner views this as DOB’s position, citing disparate scrutiny DOB applies to single-family residences as opposed to residential towers. Additionally, the commissioner expressed constitutional concerns and the absence in the record of prior mechanical plans.

Based on these considerations, two commissioners would grant this appeal.

## C.

In reaching its decision set forth herein, the Board has considered all of the parties’ arguments on appeal, including those put forth by Appellant, DOB, and the Owner, but ultimately finds Appellant’s arguments unpersuasive.

### Appellant

Appellant contends that this appeal should be granted because the New Building does not contain sufficient mechanical equipment to justify the floor-area deductions taken.

First, Appellant alleges that DOB’s statement does not include the necessary specifications on the mechanical equipment to be used in the New Building’s claimed mechanical spaces or support from a professional engineer, so it is not possible to determine that a footprint and service area for the equipment marked on the plans matches the mechanical equipment’s operational requirements. Appellant also states that the Owner’s submitted plans do not completely match the plans submitted by DOB, as they included additional sheets and an equipment schedule Appellant had never seen. Appellant also alleges that its review of the available plans demonstrate that the Owner is spreading the equipment “as thin as possible to take up unnecessary space and attempting to get the entire area of the four mechanical floors excluded from the FAR calculation.”

In a post-hearing submission, Appellant takes issue with DOB’s purported dereliction of duty, claiming that DOB’s assertion that it accepts the calculations that property owners and their design professionals present DOB is “irresponsible.” Appellant states that DOB must set forth a “concrete set of criteria to compute FAR deductions for mechanical space as required by the ZR,” and DOB’s refusal to set forth such criteria reflects a dereliction of duty under Section 643 of the City Charter. Appellant states that

DOB must review the plans the owner submitted on the 15th, 17th, 18th, and 19th floors of the New Building because the Owner claimed a full-floor deduction of floor space used for mechanical equipment. Appellant states that DOB’s review should determine the proper square feet dedicated to the floor print of the mechanical equipment, with any associated access and service area, and what portion of the remaining space would count as unused, and therefore, chargeable as floor area. Appellant takes issue with DOB’s purported policy of not having examiners review mechanical plans for accuracy of the FAR calculations and deductions and only for code compliance and asserts that is further dereliction of duty. Appellant also suggests using DOB’s draft bulletin, which lists mechanical items which may be exempted from floor area. More specifically, this draft identifies as exempt “floor space directly adjacent to mechanical equipment necessary for the purpose of access and servicing of such equipment.” This bulletin further states that adjacent space is either equal to the size of the equipment to which it provides access or the manufacturer’s recommendation, and it identifies exempt items with no access space such as ducts, chutes, and chases. Appellant urges DOB to engage in its case-by-case basis review and look more closely at the New Building because its floor area is only one square foot less than the maximum allowed as of right.

Next, Appellant’s analysis demonstrates the presence of 20 percent empty space on the New Building’s 17th floor: namely a boiler room that contains three heat pumps, only two of which take up floor space, and a mechanical equipment room that contains one heat pump and two tanks.

Based on the foregoing, Appellant alleges that the New Building does not contain sufficient mechanical equipment to justify the floor-area deductions taken, and the Permit was issued in error.

### DOB

DOB urges that this appeal be upheld because the Permit was properly issued, and the New Building contains sufficient floor space used for mechanical equipment to justify its floor-area deductions. In particular, DOB submits that it has conducted a review of the New Building of the same type the Board found satisfactory in *15 East 30th Street*.

First, DOB states that total number of floors devoted to mechanical equipment deducted from floor area for the New Building is appropriate. DOB notes it has reviewed the floors in the New Building’s zoning diagram and the mechanical drawings in response to the Board’s request that DOB review whether the number of floors devoted exclusively to mechanical equipment was typical for buildings of a similar nature. DOB notes that it has reviewed the mechanical drawings for the New Building and has concluded that the “floor space on such floors devoted to housing the mechanical equipment of the Proposed Building and those floors cannot be occupied for purposes other than the housing of such equipment.” Accordingly, DOB finds that the floor space devoted to mechanical equipment is properly exempt from floor area.



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Next, DOB notes that stories devoted entirely to mechanical equipment do contain sufficient mechanical equipment to be deducted. Using its analysis in *15 East 30th Street* as a guide, DOB submits that the New Building contains the following mechanical equipment. At the first-floor mezzanine, the New Building contains expansion tanks, hot water exchangers, cold water heat exchangers, air separators, electric cabinet unit heaters, a pipe fan coil unit, an electric unit heater, water source heat pumps, and exhaust louvers. At the 15th floor, the New Building contains a storm water detention tank, electrical switchboard, electric unit heaters, water source heat pumps, fan units, a duct heater, an electric humidifier, energy recovery unit (water source heat pump), an emergency generator, an exterior lighting dimmer rack, intake sound attenuators, and a metal plenum behind louver. At the 17th floor, the New Building contains boilers, electric unit heaters, water source heat pumps, fan units, a 2-pipe fan coil unit, hot water expansion tanks, air separators, hot water pumps, hot water exchangers, an air handler unit, an air intake louver, an exhaust louver, and pipe chase containing the elevator smoke vent and the elevator shaft supply duct passing through the floor. At the 18th floor, the New Building contains a water-cooled direct expansion air conditioning (DX) unit, cold water pumps, cold and hot water pumps, expansion tanks, air separators, water source heat pumps, electric unit heaters, electric panels, water cooled chillers, fan units, heat exchangers, an exhaust louver, and an intake louver. At the 19th floor, the New Building contains fire reserve storage tank, water source heat pumps, energy recovery units (water source heat pumps), fan units, an electric humidifier, electric unit heaters, an intake louver, and an exhaust louver. Further, in response to the Board's questions, DOB notes that, for other floors of the building where only a portion of the floor space was deducted for mechanical equipment, those floors primarily contain "principal residential use and the floor space containing mechanical equipment deducted is used for plumbing and gas pipe risers and chases including their enclosures," citing the 16th floor as an example.

In a post-hearing submission, DOB notes that the plans submitted are true copies of approved mechanical plans and that the Owner's submitted drawings depicting the New Building's mechanical piping system are also true and accurate copies. Similarly, DOB confirms that the Owner's written descriptions of mechanical equipment in the New Building are accurate.

Lastly, DOB submits that composite drawings of the interstitial mechanical floors help illustrate the complete layout of the mechanical equipment in the New Building. These drawings, submitted by DOB, were not the official approved drawings but are a compilation "overlaid for illustrative purposes."

Based on the foregoing, DOB requests that this appeal be denied and its determination upheld.

Owner

As a preliminary matter, the Owner alleges that the Board lacks authority and jurisdiction under the City

Charter to expand the scope of the appeal, *sua sponte*, to include issues not timely raised by Appellant in this appeal. In support of this, the Owner notes Section 666(8) of the City Charter: "The Board shall have power:...[t]o review, upon motion of any member of the board, rule, regulation, amendment, or repeal thereof, and any order, requirement, decision or determination from which an appeal may be taken to the board under the provisions of this chapter or of any law, or of any rule, regulation or decision of the board; but *no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified*" (Owner's emphasis). The Owner cites section 669 of the City Charter on "Procedure on Appeals" which defines who may file an appeal (subdivision a), the procedure for filing of an appeal in accordance with rules of the Board (subdivision b), the timing for the hearing of appeals and notice thereof (subdivision c), and the method for appeal of a decision of the Board (subdivision d). From these, the Owner concludes that the Board's reopening of this case is *ultra vires* and should be discontinued and dismissed.

Turning to the merits, the Owner submits that DOB has properly approved the mechanical deductions for the New Building.

First, the Owner submits that the amount of mechanical space and number of full mechanical floors in the Building are comparable to those found in similar buildings. More particularly, the Owner submitted a report on the amount of mechanical deduction as a percentage of gross floor area, concluding that the New Building's mechanical deductions at approximately 13 percent of total gross floor area set the New Building within the normal range for buildings of a similar scale and that the New Building's four interstitial mechanical floors also fall within industry standards for buildings of this scale.

Next, the Owner notes that DOB's draft bulletin cited and relied upon by Appellant does not dictate the amount of mechanical deductions for the New Building, especially considering the draft bulletin has not been officially issued in final form by DOB. Further, industry professionals have noted a number of issues that should be considered before issuance. The listed types of mechanical equipment are underinclusive, and over time expansion tanks, air separators, VFDs, control panels, HVAC chemical treatment stations, and pool equipment have been added. Although specifically delineated, the deductions would "unduly restrict" floor-area deductions by only allowing floor space for equipment-service areas at a 1:1 ratio for equipment to equipment-service areas or manufacturer's specifications. Typically, a 1:1 ratio proves insufficient in practice, and manufacturer's specifications set forth the bare minimum. The draft bulletin further does not adequately account for architectural considerations—including that mechanical floors require corridors, vestibules, and general access routes that allow individuals to circulate and meet applicable egress standards.

The Owner also submits that the New Building's mechanical floors were appropriately deducted from floor

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area calculations, while Appellant's diagram and calculations are fatally flawed. First, Appellant fails to account for various forms of equipment that are shown on the HVAC mechanical ductwork plans such as the mechanical fans, heaters, shafts, chases, horizontal ductwork distribution and plenums. Appellant's analysis is based on the HVAC mechanical ductwork plans alone and omits all the equipment shown on the other sets of mechanical plans for each floor. Appellant also erroneously applies the standards in the DOB's draft bulletin, which has not yet been adopted by DOB, are unduly restrictive and inapposite to current DOB practice. Lastly, because Appellant includes building core, structure, and curtain wall within the total area of the floor in calculating the percentage of floor area used for mechanical equipment and service areas, even Appellant's calculations for the 90-percent threshold in DOB's draft bulletin is faulty.

Further, while the New Building's mechanical layout was carefully designed in accordance with best practices to meet the New Building's specific needs, the Owner contends that Appellant's hypothetical alternative layout of certain equipment for the 17th floor does not reflect a complete engineering plan and is unrealistic. In support of this contention, the Owner submitted a technical affidavit attesting that there are many considerations an engineer must take into account when designing mechanical layouts for a building—including accessibility, constructability, proximity of equipment and systems to the occupied spaces they serve, required separations between specific systems, and proximity to exterior walls for air intake and exhaust—but Appellant's analysis does not take them into consideration.

In a post-hearing submission, the Owner reiterates that the New Building's mechanical layouts were carefully designed in accordance with best practices and design criteria in order to meet the New Building's specific needs. In support of this contention, the Owner provided testimony by multiple design professionals, including the associated mechanical engineer and professional engineer, detailing how the New Building's mechanical floors were designed and how there is significant variation in the amount of mechanical space and floors in residential buildings.

Additionally, the Owner submits that Appellant's analyses do not accurately reflect the New Building's mechanical layouts and do not demonstrate credible alternative designs. First, Appellant's diagrams understate the amount and types of mechanical equipment on the floor because they are based on the HVAC mechanical ductwork plans alone and omit all the equipment shown on the three other sets of mechanical plans (HVAC mechanical piping, fire protection, and plumbing) and they omit pieces of equipment shown on the HVAC mechanical ductwork plans. Second, Appellant's hypothetical alternative layouts are misleading because the layouts were not developed using the design process employed by mechanical engineers, which involves consideration of several design criteria and coordination with consultants. More specifically, these diagrams do not depict realistic layouts

because they do not take into account the full range of mechanical equipment shown on the mechanical drawings, and the reorganization of equipment was performed without consideration of any design criterion.

The Owner notes that DOB properly approved the mechanical deductions for the New Building. More particularly, the Owner notes that DOB has summarized its standard for making mechanical deductions as: "If the room contains so much equipment and associated room to maneuver around it and to be able to operate equipment such that other uses can't be occupied in the space . . . that would be considered deductible without a doubt." Even though this standard has not been codified, the Owner argues that it can be considered the applicable standard for the purposes of this hearing and counts as the methodology that DOB's plan examiners follow.

Lastly, the Owner reiterates the position that this continued hearing should be dismissed on the basis that Appellant had not properly raised the issue considered herein in its filing, and the City Charter does not give the Board jurisdiction to expand the scope of an appeal on its own accord.

For the foregoing reason, the Owner submits that this appeal should be dismissed or, if the merits are reached, denied.

#### IV.

The Board has considered all of the arguments on appeal but finds them ultimately unpersuasive. In response to community concerns expressed with the review of mechanical plans, the Board notes that nothing herein shall be interpreted as preventing or delaying DOB's issuance of appropriate guidance on standards clarifying when "floor space" is "used for mechanical equipment." Z.R. § 12-10. It is clear from this appeal that, going forward, DOB should improve its analytical methods in reviewing these floor-area deductions to further incorporate its technical expertise in mechanical engineering into its zoning review to confirm whether a building complies with all applicable zoning regulations.

Based on the foregoing, the Board finds that Appellant has failed to demonstrate that the architectural and mechanical plans for the New Building show insufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions.

*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, January 28, 2020.

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## 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.

### COMMUNITY BOARD #7Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 28, 2018, acting on New Building Application No. 421609076, reads in pertinent part:

The proposed new building has non-comp[li]ant front, side and rear yards, resulting from the location of such mapped street. Sincerely request to obtain Board of Standards and Appeals waiver pursuant to ZR 72-01(g).

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.

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 November 19, 2019, and January 28, 2020, and then to decision on that date. Community Board 7, Queens, recommends approval of this application. The Board was in receipt of testimony from neighbors in opposition to the subject application and raising concerns regarding traffic and pedestrian congestion Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the east side of 129th Street, between Sixth Avenue and Pearl Road, partially within an R3-2 zoning district and partially within an R3-1 zoning district, in Queens. The Premises have approximately 100 feet of frontage along 129th Street, an irregular depth, 26,405 square feet of lot area, and are currently vacant.

The Premises are partially located within the bed of Sixth Avenue, a street extending east from the intersection of 129th Street and Sixth Avenue and mapped to a width of 60 feet, but unimproved east of the Premises and not in use.

The applicant proposes to develop the existing lot with a new three-story ten-unit residential building within the bed of a mapped, but unimproved portion of Sixth Avenue. The applicant submits that the proposed building will comply and conform with all applicable provisions of the Zoning Resolution.

The Department of Environmental Protection (“DEP”) states, by letter dated March 11, 2019, that, based on DEP maps, there are no existing sewers or water mains in the bed of Sixth Avenue east of 129th Street; the Amended Drainage

Plan for the sewerage District No: 32SW (9), 42SW (60), dated December 1st, 1967, shows 10-inch diameter sanitary sewer and 12-inch diameter storm sewer in the bed of Sixth Avenue at the subject location; the applicant submitted a request to amend the drainage plan; DEP’s Drainage & Modeling found the plans and information submitted by the applicant sufficient to amend the drainage plan; and, based on the foregoing, DEP has no objection to the application.

The Department of Transportation (“DOT”) states, by letter dated June 19, 2019, that, according to the Queens Topographical Bureau, Sixth Avenue is mapped at a 60-foot width and the City does not have title at this location—as such, DOT issued the following comments: 1) the southerly proposed inclined curb cut will pose difficulty for vehicles entering into and exiting out of the Premises, in addition to creating an unsafe condition for pedestrians; redesign the curb cut to be perpendicular and coincident to the driveway for smoother ingress and egress; 2) it is recommended that the Premises be developed with one wider curb cut with two-way operation on the north side of the property, as this would allow the curb cut to be perpendicular to the driveway and provide safer ingress and egress; and, 3) the applicant should install a five-foot wide sidewalk in front of the property to meet the minimum American’s with Disabilities Act (ADA) required width.

Over the course of hearings, the Board raised concerns that the proposed development might cut off access to properties located at block 3960, tax lots 34 and 36, and conducted outreach to parcels that do not appear to have access to a street or other public right of way. By letter dated November 25, 2019, the Board notified such property owner, reciting the Board’s concerns, providing a copy of the proposed site plan, and seeking written or oral testimony. The Board was in receipt of no testimony from such property owners.

The Board notes that pursuant to GCL § 35, it may authorize construction within the bed of a mapped street subject to reasonable requirements. 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 28, 2018, acting on New Building Application No. 421609076, 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 November 18, 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 applicant shall comply with DOT recommendations including but not limited to curb cuts, access, and accessibility;

THAT a certificate of occupancy, also indicating this approval and calendar number (BSA Cal. No. 2018-151-A), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to

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exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 8, 2024;

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 28, 2020.

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## 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** – 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 28, 2020.

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## 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 May 12, 2020, at 10 A.M., for adjourned hearing.

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## 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 March 24, 2020, at 10 A.M., for continued hearing.

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## 2019-69-A & 2019-70-A

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

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

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

### COMMUNITY BOARD # 2SI

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for postponed hearing.

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## 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** – Application withdrawn without prejudice.

THE VOTE –

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 28, 2020.

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## 2018-191-BZ

### CEQR #19-BSA-063K

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21.

M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 215 North 10<sup>th</sup> Street, Block 2299, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 19, 2018, acting on New Building Application No. 321383551, reads in pertinent part:

“The proposed number of parking spaces is less than the amount of parking required, contrary to 44-21.”

This is an application under Z.R. §§ 73-44 and 73-03 to permit, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) zoning district, a reduction in the number of accessory off-street parking spaces required for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16), contrary to Z.R. § 44-21.

A public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with continued hearings on November 26, 2019, and January 28, 2020, and then to decision on January 28, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 1, Brooklyn, recommends approval of this application.

The Premises are located on the northwest corner of North 10th Street and Roebing Street, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) District, in Brooklyn. The Premises have approximately 180 feet of frontage along North 10th Street, 100 feet of frontage along Roebing Street, 18,000 square feet of lot area and is under construction of a proposed six-story plus cellar mixed-use residential and commercial office building that will contain approximately 30,898 square feet of Use Group 6B commercial office floor area.

The Board notes that its determination herein is also subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available. Pursuant to Z.R. § 73-44, the Board may reduce the required parking for commercial

office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) at the Premises from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith.

The applicant submitted an affidavit stating that the building will be occupied by commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16). The applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius. The Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed Use Group 6 commercial office use. Further, the Board states that the retail space is not eligible for a parking reduction, there must be no retail space on the site and the entire commercial use must be designated as Use Group 6B office space.

Over the course of hearings, the Board raised concerns regarding the use of overhead vehicle lifts in the cellar of the proposed building and whether the loading and unloading areas in relation to the valet fostered effective circulation. In response to the Board’s comments at hearing, the applicant submitted an operational plan and revised drawings to show short-, medium-, and long-term parking areas, designated loading areas with striping and signage, and documentation demonstrating the specifications of the vehicle lifts.

By letter dated November 25, 2019, the Fire Department (“FDNY”) stated that, after consultation with members in the Fire Department’s Technology Management Unit (“TMU”), it is FDNY’s position that plans of the proposed “Clearspan Electric Auto Lift” be filed for review; a concern of TMU is clearance of sprinkler lines around the proposed auto lift (stackers), firefighter access to automobiles, and ingress and egress from the parking garage; the applicant must request a letter of no objection to the installation of the proposed auto lift stackers by submitting signed and sealed plans and a completed TM-1 to the FDNY Bureau of Fire Prevention, TMU for plan review. By letter dated January 26, 2020, FDNY states that plans for the “Clearspan Electric Auto Lift” are being reviewed by TMU for compliance with the original objection and FDNY is confident that the plans address concerns regarding firefighting operations at these premises; FDNY has no objection to the application. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the

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

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA063K, received January 9, 2020. The EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts. An (E) designation (E-138) was placed on the site for hazardous materials in connection with the 2005 Greenpoint-Williamsburg FEIS. With regards to hazardous materials, the (E) designation requires two tasks: 1) that the applicant submit to the New York City Office of Environmental Remediation (“OER”), for review and approval, a soil and groundwater testing protocol including a description of methods and a site map with all sampling locations clearly and precisely represented; no sampling program should begin until written approval of a protocol is received from OER; the number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e. petroleum based contamination and non-petroleum based contamination) and the remainder of the site’s condition; the characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data; guidelines and criteria for selecting sampling locations and collecting samples will be provided by OER upon request, and 2) a written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval; after receiving such test results, a determination will be made by OER if the results indicate that remediation is necessary; if OER determines that no remediation is necessary, written notice shall be given by OER; if remediation is indicated from the test results, a proposed remediation plan must be submitted to OER for review and approval; the applicant must complete such remediation as determined necessary by OER; the applicant should then provide proper documentation that the work has been satisfactorily completed; an OER-approved construction-related health and safety plan will be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater; the Plan will be submitted to OER for review and approval prior to implementation. By correspondence dated November 25, 2019, the Department of City Planning represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program

(“WRP”) policy and determines that the project is consistent with WRP policies. The Board has determined that the proposed action will not have a significant adverse impact on the environment and that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-44 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03 to *permit*, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) zoning district, a reduction in the number of accessory off-street parking spaces required for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16), contrary to Z.R. § 44-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 28, 2020”-Nineteen (19) sheets; and *on further condition*

THAT 67 parking spaces (51 spaces for office use, 16 for residential use) shall be provided on site, as shown on the BSA-approved plans;

THAT patrons entering the garage shall be greeted by a valet then instructed to park and exit their vehicle within the approximately 800 square foot (~20’ wide x ~40’ deep) unloading zone just inside the garage entrance, which shall be maintained marked with reflective striping for visual prominence;

THAT no patrons are allowed outside of the unloading zone;

THAT when the garage is busy with inbound traffic, the valets shall move the cars from the unloading zone and temporarily park the cars in the first available space in order to make room for more inbound patrons, and once the garage activity has slowed down, the valets shall reposition cars that were temporarily parked during the busy period to a position that corresponds with the patron’s stated exit date and time;

THAT the valet shall categorize patrons into one of three categories of parkers, as short-, medium-, and long-term;

THAT the certificate of occupancy issued for the building within which the commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) is located shall state that no certificate shall thereafter be issued if the Use Group 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-191-BZ”), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 24, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2020.

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**CORRECTION: This resolution adopted on January 28, 2020, under Calendar No. 2019-60-BZ, is hereby corrected to read as follows:**

**2019-60-BZ**

**CEQR #19-BSA-106Q**

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 89<sup>th</sup> Avenue, Block 9361, Lot 20, Borough of Queens.

**COMMUNITY BOARD #9Q**

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

**THE VOTE** –

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

**THE RESOLUTION** –

The decision of the Department of Buildings, dated March 4, 2019, acting on Alteration Application No. 421600725, reads in pertinent part: “[. . .] above referenced job number and structure violation(s) of ZR Sec 43-301, 43-303 and which is also contrary to ZR Sec 77-11, to allow the constructed industrial warehouse encroachment into the required side yard. The purpose of this request is to obtain

formal decision denying our proposal to legalize the [. . .] warehouse as constructed with less side yard than required by ZR Sec 43-301, 43-303.”

This is an application under Z.R. §§ 73-50 and 73-03 to legalize, on a site in an M-1 zoning district abutting an R4 zoning district, a 1,566-square foot portion of an existing manufacturing/warehouse building (Use Group 17) with accessory office space (Use Group 6) which encroaches into the required 15-foot side yard, contrary to Z.R. § 43-301.

A public hearing was held on this application on November 23, 2019, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2020, and then to decision on the same date. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood, and Community Board 9, Queens, recommends approval.

The Premises are bounded by 89th Avenue and the terminus of 132nd Street to the north and a railroad right-of-way owned and operated by the MTA/Long Island Railroad to the west, with approximately 201 feet of frontage along 89th Avenue, 320 feet of frontage along its eastern lot line, and 45,593 square feet of lot area. The Premises are occupied by an existing two-story masonry building with one-story metal warehouse, one-story garage, and three one-story buildings. The Premises are located within an M1-1 zoning district that abuts an R4 zoning district at its eastern lot line.

Pursuant to Z.R. § 43-301 an open area not higher than curb level and at least 15 feet wide must be provided within the manufacturing district that is not used for accessory off-street parking, accessory off-street loading, or for storage or processing of any kind. The applicant proposes to legalize a one-story, 1,566 square foot metal shed with a 0.84-foot side yard, which encroaches into the side yard that abuts the R4 zoning district and is less than the required 15 feet. The applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution.

Pursuant to Z.R. § 73-50, the Board may grant a waiver of the side yard requirements set forth in Z.R. § 43-30 in appropriate cases. The applicant states that the instant application is an appropriate case for a waiver of the requirements set forth in Z.R. § 43-30. The applicant states that the noncomplying side yard will allow for the use of the Premises, which already contains a light manufacturing use, for light manufacturing and accessory office space (UG 17 and 6), but is unable to utilize its main facility because it falls within an encroaches into the side yard required abutting the R4 district. The applicant states that, in order to comply with Z.R. § 43-301, the 15-foot side yard would render the existing buildings at the Premises noncomplying and unable to continue the existing and proposed use, which is permitted as-of-right. As to the infeasibility, the applicant represents that the irregular triangular-shaped lot, located between a residential area and a railroad right-of-way, does not allow the Premises to be developed without encroaching along the eastern lot line and resulting in the absence of the required 15-foot side yard along district boundaries, as the

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widest portion of the lot at 89th Street contains 200 feet of width, along with a building approximately 148 feet wide, with a 14-foot wide garage on the western side of the lot. After the widest area in the north of the Premises, the triangular shape of the lot results in a narrowing width, and, with existing buildings on the Premises, cannot provide a 15-foot buffer area.

The applicant represents that the waiver will not have an adverse effect on the surrounding area. The applicant represents that the properties in the R4 district adjacent to the east of the proposed building contain one- and two-family houses on lots 110 feet in depth, allowing ample space between the houses located towards the front of the lots (away from the Premises) and the remaining area containing garages or sheds closest to the shared lot line. The garages or sheds would not be adversely affected by the light manufacturing use, as any residential use is not permitted to be located within the rear 30 feet of these properties, as per Z.R. § 23-47, and the closest operable windows of such residences are approximately 50 feet from the Premises, providing ample buffer space between the two uses with storage and parking located between the two uses in small structures.

At hearing, the Board raised concerns regarding the site conditions and compliance of the Premises with Building Code provisions and directed the applicant to provide a signed and sealed letter from the architect attesting to such compliance. The Fire Department also raised concerns regarding the connection of the extension of the sprinkler system to the existing building's sprinkler system.

In response, the applicant demonstrated the removal of the razor wire from the buildings' rooftops and provided photographs of the interior of the area to be legalized. Additionally, the applicant provided a signed and sealed letter from the architect attesting to compliance of the legalization with Building Code provisions: specifically, the square footage of the area to be legalized, the foundation of the portion of the structure to be legalized, the two-hour fire-rating of the walls of the metal shed structure, and compliant egress from the shed structure and its connection to the main building. The applicant also revised the plans to show door swings in the direction of egress and represented that the sprinkler system is due for a five-year hydrostatic pressure test on March 5, 2020.

Based on the record, the Board finds that the application meets the requirements of Z.R. § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit and that the adverse effect, if any, will be minimized by appropriate conditions. The proposed project will not

interfere with any pending public improvement project and therefore satisfies the requirements of Z.R. § 73-03(b).

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment (Short Form) Statement

CEQR No. 19BSA106Q, received March 20, 2019. 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; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts.

The Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-50 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-50 and 73-03 to *legalize*, in a M1-1 zoning district, a 1,566-square foot portion of an existing manufacturing/warehouse building (Use Group (“UG”) 17) with accessory office space (Use Group 6) which encroaches into the required 15-foot side yard, contrary to Z.R. § 43-301; *on condition* that all work, site conditions, and operations shall conform to drawings filed with this application marked Received “January 29, 2020”- eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the metal shed building shall be as follows: a maximum floor area of 1,566 square feet and a side yard with a minimum width of 0.84 feet;

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. 2019-60-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 this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2020.

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## 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 38<sup>th</sup> Street, Block 645, Lot 10, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for adjourned hearing.

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## 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 March 17, 2020, at 10 A.M., for adjourned hearing.

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## 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 March 17, 2020, at 10 A.M., for adjourned hearing.

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## 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 70<sup>th</sup> Street, Block 1385, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to February 25, 2020, at 10 A.M., for adjourned hearing.

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## 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 31<sup>st</sup> Avenue, Block 728, Lot 1 & 5, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to February 25, 2020, at 10 A.M., for adjourned hearing.

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## 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 March 24, 2020, at 10 A.M., for continued hearing.

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## 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 14<sup>th</sup> Street, Block 7373, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M. for continued hearing.

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## REGULAR MEETING TUESDAY AFTERNOON, JANUARY 28, 2020 1:00 P.M.

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

### ZONING CALENDAR

#### 2019-83-BZ

#### CEQR #19-BSA-125K

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

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

#### THE VOTE –

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

Negative:.....0

#### THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 1, 2019, acting on DOB Alteration Type I Application No. 322058143, reads in pertinent part:

“Proposed Physical Culture establishment in C2-2 Zoning district is contrary to section 32-10 ZR and requires a special permit from BSA (73-36).”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, in a C2-2 (R3-2) zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 18, Brooklyn, recommends approval of this application. The Board received three form letters of objection to this application citing concerns relating to traffic and noise.

The premises are bounded by Flatlands Avenue to the south, East 59th Street to the west, and Paerdegat Avenue to the east, in a C2-2 (R3-2) zoning district, in Brooklyn. The premises have approximately 141 feet of frontage along Flatlands Avenue, 368 feet of frontage along East 59th Street, 210 feet of frontage along Paerdegat Avenue, 25,921 square feet of lot area and are under construction of a two-story commercial building.

The Board notes that its determination is subject to

and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE will occupy 16,928 square feet of floor area as follows: 7,260 square feet of floor area on the first floor, including a reception area, locker areas, storage space, office space and a workout/physical therapy area, and 9,668 square feet of floor area on the second floor, used for exercise activities, including cardio, weight training, and stretching. The PCE will operate as “Blink Fitness”, with the following hours of operation: Monday to Saturday, 5:30 a.m. to 11:00 p.m. and Sunday, 7:00 a.m. to 9:00 p.m. The applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the premises have pedestrian access to mass transit facilities within its vicinity. In addition, the applicant submits that, while no noise or vibration issues are anticipated because the PCE will be the only tenant in the proposed two-story commercial building, sound attenuation measures will be installed to maintain a sound level within the building that will not exceed a maximum level of 45 dBA, including sound emanating from any sound system if installed, including rubber flooring in activity areas and demising walls with batt insulation. 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. The applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant represents that the PCE will be fully sprinklered and that an approved fire alarm will be installed within the entire PCE space. By letter dated January 25, 2020, the Fire Department states applications for new fire suppression (sprinkler) and fire alarm systems have been filed and approved by the DOB and the Fire Department; a Place of Assembly application must be filed with the DOB, after the final occupancy number has been determined if the total exceeds seventy-five persons; based on the foregoing,

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the Fire 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.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project. The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-125K, received April 25, 2019. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received January 27, 2020"-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 28, 2030;

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

THAT minimum three-foot-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 sprinkler and interior fire alarm system shall be installed and maintained in the entire PCE space, as indicated on the Board-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-83-BZ"), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 12, 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, January 28, 2020.

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## 2019-177-BZ

### CEQR #19-BSA-150M

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 8<sup>th</sup> Street, Block 553, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #2M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated June 11, 2019, acting on DOB Alteration Type I Application No. 123767227, reads in pertinent part:

"ZR 22-10, ZR 32-10, ZR 32-31, ZR 73-36, ZR 83-03: A#Physical Culture Establishment# is not allowed as-of-right in a R6 or C4-5 zoning district or in the LC Special District. Obtain NYC Board of Standards and Appeals (BSA) approval."

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C4-5 zoning district and partially within an R6 zoning district, and in the Special Limited Commercial District and the Greenwich Village Historic District, the operation of a physical culture establishment ("PCE"), contrary to Z.R. § 32-10.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 2, Manhattan, recommends approval of this application.

The premises are located on the south side of West 8th Street, between Avenue of the Americas and McDougal Street, partially within a C4-5 zoning district and partially within an R6 zoning district, and in the Special Limited

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# MINUTES

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Commercial District and the Greenwich Village Historic District, in Manhattan. The premises have approximately 24 feet of frontage along West 8th Street, 134 feet of depth, 3,942 square feet of lot area, and are occupied by a one-story with cellar commercial building.

The applicant represents that the PCE is located within a zoning district in which the use is permitted and the Department of Buildings shall verify its location in compliance with the Zoning Resolution. The subject PCE occupies 3,550 square feet of floor space on the cellar, with storage, and 3,550 square feet of floor area on the first floor with two yoga studios, restrooms, lockers and showers. The PCE began operation on December 17, 2019, as “CorePower Yoga,” with the following hours of operation: Monday to Friday, 5:30 a.m. to 9:00 p.m., Saturday and Sunday, 8:00 a.m. to 6:30 p.m. The applicant represents that the PCE use is consistent with the commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the premises has pedestrian access to rapid transit facilities within the vicinity. 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. The applicant states that the PCE provides classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory. The applicant represents that the PCE will not have an adverse effect, if any, on the privacy, quiet, light and air in the neighborhood because it is the only use in the building, will not contain any workout equipment or workout attachments to the ceiling, only light hand weights will be utilized in only certain classes, and only soft music will be played in the PCE on a sound system with a sound limiter. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

By letter dated January 25, 2020, the Fire Department states these premises do not have nor is required to have a fire suppression or fire alarm system as per the current NYC Construction Code. The Plans have been revised to show the two yoga studios, sharing the same ingress and egress hallway, clear of lockers, shoe cubby/bench and chairs. The hallways must remain clear of any objects to the front exit doors. Based on 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.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of

the proposed Type II action noted in the CEQR Checklist No. 19BSA150M, dated June 19, 2019. The term of the special permit has been reduced to reflect the period of time the PCE has operated without Board approval. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C4-5 zoning district and partially within an R6 zoning district, and in the Special Limited Commercial District and the Greenwich Village Historic District, the operation of a physical culture establishment, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received January 27, 2020- Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring December 17, 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 provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

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, 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. 2019-177-BZ”), shall be obtained within one year, and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 21, 2021;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or

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# MINUTES

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configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
January 28, 2020.

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**2019-181-BZ**

**CEQR #19-BSA-154M**

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**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 18, 2019, acting on DOB Alteration Type I Application No. 123277621, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in C6-2A Zoning District and is contrary to section ZR 32-10. Use as the Physical culture health establishment in C6-2A Zoning District shall comply with regulation of section ZR 32-31 (uses permitted by special permit of the Board of Standards and Appeals).”.

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C6-2A zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 1, Manhattan, recommends approval of this application.

The Premises are located on the north side of Leonard Street, between Church Street and West Broadway, in a C6-2A zoning district, in Manhattan. The Premises have approximately 24 feet of frontage along Leonard Street, 100 feet of depth, 2,433 square feet of lot area and are occupied by an existing five-story mixed-use residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon

other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 1,872 square feet of floor area on the first floor with a reception area, locker and changing area, and a yoga studio. The PCE has been in operation since February 2018, as “Y7 Studio”, with the following hours of operation: Monday through Friday, 7:00 a.m. to 9:30 p.m., and Saturday and Sunday, 9:00 a.m. to 7:00 p.m. The applicant represents that the PCE use is consistent with commercial area in which it is located and the PCE use is fully contained within the envelope of an existing mixed-use building. In addition, the applicant submits that sound attenuation measures, including acoustic walls, ceilings and hung speakers, have been provided within the space so as to not disturb other tenants in the building. 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.

The applicant states that the PCE contains facilities for classes, instruction, and programs for physical improvement, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the Premises are protected by automatic wet sprinklers and an approved interior fire alarm system connected to an FDNY approved central station. By letter dated January 27, 2020, the Fire Department states these premises do not have nor are required to have a fire suppression or fire alarm system as per the current NYC Construction Code. 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.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of

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the proposed Type II action noted in the CEQR Checklist No. 19BSA154M, dated June 25, 2019.

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

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 Z.R. §§ 73-36 and 73-03 to *legalize*, in a C6-2A zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received January 28, 2020”-Eleven (11) sheets; *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 1, 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 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 automatic sprinkler system and an approved interior fire alarm system shall be maintained, 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. 2019-181-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 12, 2021;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other

relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 28, 2020.

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## **2017-317-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district. PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M. for continued hearing.

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## **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 March 17, 2020, at 10 A.M. for continued hearing.

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## **2019-24-BZ**

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to April 28, 2020, at 10 A.M. for continued hearing.

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## **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.

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PREMISES AFFECTED – 373 Avenue W, Block 7153, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M. for continued hearing.

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**2019-203-BZ**

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to May 19, 2020, at 10 A.M. for continued hearing.

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**2019-269-BZ**

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

**COMMUNITY BOARD #12BX**

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M. for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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

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Volume 105, No. 6

February 14, 2020

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
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**2020-14-BZ**

34-10 12th Street, Block 00326, Lot(s) 0029, Borough of **Queens, Community Board: 1.** Variance (§72-21) to permit the enlargement of a one-story, non-conforming manufacturing establishment (UG 17) contrary to ZR §§22-10 and 52-41. R5 zoning district. R5 district.  
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**2020-15-BZ**

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**2020-16-A**

32-35 Queens Boulevard, Block 00244, Lot(s) 0050, Borough of **Queens, Community Board: 2.** 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. M1-4 district.  
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**2020-17-BZ**

280 Marsh Avenue, Block 2400, Lot(s) 300, Borough of **Staten Island, Community Board: 2.** Special Permit (§73-36) to permit the operation of a physical cultural establishment (24 Hour Fitness) to be located on the first floor of a one-story commercial building contrary to ZR §32-10. C4-1 zoning district. C4-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING FEBRUARY 25, 2020, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 25, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### 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**

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#### 42-97-BZ

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

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

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

**COMMUNITY BOARD #3Q**

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#### 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**

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## REGULAR MEETING FEBRUARY 25, 2020, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 25, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### ZONING CALENDAR

#### 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 26<sup>th</sup> Street, Block 775, Lot 64, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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#### 2019-76-BZ

APPLICANT – Law Office of Lyra J. Altman, for Danny Mita, owner.

SUBJECT – Application April 19, 2019 – 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.

PREMISES AFFECTED – 1973 East 16<sup>th</sup> Street, Block 7295, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Carlo Costanza, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 4, 2020  
10:00 A.M.**

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

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## **SPECIAL ORDER CALENDAR**

### **207-68-BZ**

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

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

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north Newburg Street. Block 10315, Lot 0134. Borough of Queens.

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to June 16, 2020, at 10 A.M., for continued hearing.

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### **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 June 30, 2020, at 10 A.M., for continued hearing.

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### **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 21<sup>st</sup> Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

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

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M. for adjourned hearing.

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### **120-13-BZ**

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, owner.

SUBJECT – Application August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, irregularly shaped 42,788 square foot lot with frontage on Forest Avenue and Morningstar Road. Block 1180, Lot(s) 6, 49. Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

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## **APPEALS CALENDAR**

### **2018-201-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Elbi Cespedes, lessee.

SUBJECT – Application December 28, 2018 – 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. PREMISES AFFECTED – 46 Kissel Avenue, Block 0078, Lot 0021, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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### **2019-185-A**

APPLICANT – P. Vengoechea / T. Boyland; v+b Architecture, for Raymond Giffen Sr. Trust, owner.

SUBJECT – Application July 2, 2019 – 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.

PREMISES AFFECTED – 57 Fletcher Street, 200.0’ fronting Fletcher Street, portion of parcel bounded at north west by Amity Street, Block 2974, Lot(s) 4, 7, 10, 13, 60, 61. Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## 2019-186-A

APPLICANT – P. Vengoechea / T. Boyland; v+b Architecture, for Raymond Giffen Sr. Trust, owner.

SUBJECT – Application July 2, 2019 – 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.

PREMISES AFFECTED – 47 Fletcher Street, 200.0' fronting Fletcher Street, portion of parcel bounded at north west by Amity Street, Block 2974, Lot(s) 4, 7, 10, 13, 60, 61. Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## 2019-303-A

APPLICANT – Sheldon Lobel, P.C., for 55 Eckford Acquisition LLC, lessee.

PREMISES AFFECTED – Application December 10, 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 zoning district regulations. M1-2/R8B/R6A and MX-8. PREMISES AFFECTED – 55 Eckford Street, the west side of Eckford Street between Driggs and Engert Avenues. Block 2698, Lot 32. Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

## 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** – Application withdrawn.

THE VOTE –

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 4, 2020.

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## 2018-59-BZ

### CEQR #18-BSA-129Q

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** – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 28, 2018, acting on DOB Alteration Application No. 420460138, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted as-of-right as per Section ZR 42-10 and a special permit by the Board of Standards and Appeals (BSA) is required to comply with ZR 73-36.

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-5 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing seven-story plus cellar commercial building, contrary to Z.R. § 42-10.

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 February 4, 2020, and then to decision on that date. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 1, Queens, recommends approval of this application on condition that parking spaces designated for use by PCE clients be required, the fire exit plan be reviewed with respect to egress through the aerobic room, and the access lift remain unobstructed. The Queens Borough President also recommends approval of this application.

The Premises are located on the southeast corner of Northern Boulevard and 40th Avenue, within an M1-5 zoning district, in Queens. The Premises have approximately 314 feet of frontage along Northern Boulevard, an irregular depth ranging from 291 feet to 299 feet, 104,742 square feet of lot area, and are occupied by an existing seven-story plus cellar commercial building.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 8,389 square feet of floor area on a portion of the first floor with

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areas for reception, cardio, weightlifting, dance and aerobics, and lockers. The PCE began operation in April, 2018, as “Powerhouse Gym,” and is open Monday through Thursday, 6:00 A.M. to 12:00 A.M., Friday, 6:00 A.M. to 11:00 P.M., Saturday, 7:00 A.M. to 7:00 P.M., and Sunday, 8:00 A.M. to 6:00 P.M.

The applicant states that the PCE maintains sound attenuation measures to ensure there are no noise impacts to other spaces in the building, including acoustical walls surrounding the PCE providing an STC rating of 54, and reinforced concrete slab with 1.25" rubber fitness flooring tile and an acoustical drop ceiling providing STC ratings of 55. 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 compatible with the commercial uses located within the subject building and surrounding neighborhood.

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

The applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit.

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

The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood, anticipates that the PCE will provide a desirable use for the community, and ensures that the volume of music is kept to a minimum and excessive noise-making is not permitted.

The applicant represents that a fire alarm system and sprinkler system are maintained within the PCE space. The Fire Department states, by letter dated October 22, 2019, that the Premises are protected by a combination suppression system (standpipe and sprinkler) and a self-certification has been filed with DOB for the new system; the base building new fire alarm installation has been inspected and signed-off, according to DOB records; an application for an operating permit for the public assembly space must be filed with the DOB borough office upon the issuance of a special permit from the Board of Standards and Appeals; the Bureau’s Licensed Public Place of Assembly unit has inspected these premises and issued a violation order (E561129) for occupying the space without an operating permit issued by DOB; 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.

Over the course of hearings, the Board raised concerns that the PCE maintains an egress route through the dance studio/aerobics room, which has great potential to be obstructed with exercise equipment, and recommends the Department of Buildings review the fire egress route of the PCE, specifically through the dance studio/aerobics room,

and conduct regular inspections to ensure the required means of egress remain free and unobstructed at all times.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community.

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

Accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-129Q dated April 26, 2018.

The term of the special permit has been reduced to reflect the period of time the PCE operated without Board approval. Based upon its review of the record, the Board finds that the requested special permit, legalizing 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 Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-5 zoning district, the operation of a proposed physical culture establishment on a portion of the first floor of an exiting seven-story plus cellar commercial building, contrary to Z.R. § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 16, 2020”-Eight (8) sheets; and *on further condition:*

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

THAT the Department of Buildings shall review the fire egress route of the PCE, specifically through the dance studio/aerobics room, and conduct regular inspections to ensure the required means of egress remains free and unobstructed at all times;

THAT sound and vibration levels of the PCE shall be maintained at all times so as to not disturb other 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 fire alarm system and 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

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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. 2018-59-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 13, 2021;

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 4, 2020.

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## 2018-168-BZ

### CEQR #19-BSA-051K

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 26<sup>th</sup> Street, Block 6809, Lot 65, 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** –

The decision of the Department of Buildings (“DOB”), dated September 21, 2018, acting on Department of Buildings Alteration Type II Application No. 321740381, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed open space is less than the minimum required.
3. Proposed plans are contrary to Zoning

Resolution Section 23-142 in that the proposed lot coverage exceeds the maximum permitted.

4. Proposed plans are contrary to Zoning Resolution Section 23-46 1 and 23-47 in that the proposed side yards are less than the minimum required.

5. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing two-story 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.

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, November 26, 2019, and February 4, 2020, and then to decision on that date. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board was also in receipt of 31 form letters in support of this application and 6 form letters in opposition, raising concern that the enlarged dwelling would be out of character with the neighborhood.

The Premises are located on the east side of East 26th Street, between Quentin Road and Avenue R, within an R3-2 zoning district, in Brooklyn. The Premises have approximately 30 feet of frontage along East 26th Street, 100 feet of depth, 3,000 square feet of lot area, and are occupied by an existing two-story plus cellar single-family detached residence. The Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story plus cellar detached residence with 0.50 FAR (1,490 square feet of floor area), 72 percent of open space (2,149 square feet of open space), 28 percent of lot coverage, two side yards with widths of 2’-10-3/4” and 7’-0”, and a rear yard with a depth of 44’-10-3/4”. The applicant proposes to horizontally and vertically enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 0.98 FAR (2,931 square feet of floor area), 58 percent of open space (1,734 square feet of open space), 42 percent of lot coverage (1,267 square feet of lot coverage), two side yards with widths of 2’-10-3/4” and 7’-0”, and a rear yard with a depth of 27 feet.

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At the Premises, a maximum of 0.5 FAR (1,500 square feet of floor area) is permitted, a minimum of 65 percent open space (1,950 square feet of open space) is required, a maximum of 35 percent lot coverage (1,050 square feet of lot coverage) is permitted, two side yards, each with minimum widths of 5 feet and a minimum of 10 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-142, 23-461, 23-48, and 23-47.

The applicant proposes to enlarge the floor area at the first floor from 851 square feet to 1,267 square feet, the second floor from 639 square feet to 1,112 square feet, and create an attic with 553 square feet of floor area. The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R3-2 zoning district (the "Study Area"), finding that, of the 139 qualifying residences, 84 residences (60 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.05 and 6 residences have an FAR of 0.98 or greater. The applicant submitted a lot coverage study, demonstrating that 121 lots (87 percent) within the Study Area have a lot coverage greater than 35 percent, ranging from 36 percent to 56 percent, and 59 lots have 42 percent lot coverage or greater. The applicant submitted a rear yard study demonstrating that, on the subject block, 11 interior lots have rear yards with depths less than 30 feet, ranging from 13 feet to 26 feet. The proposed enlargement includes an extension of the existing non-complying 2'-10-3/4" northern side yard, and, pursuant to a 1929 Belcher Hyde Desk Atlas including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project. The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-051K, dated October 24, 2018. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 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 Z.R. §§ 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 January 16, 2020"-Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of with 0.98 FAR (2,931 square feet of floor area), a minimum of 58 percent of open space (1,734 square feet of open space), a maximum of 42 percent of lot coverage (1,267 square feet of lot coverage), two side yards with minimum widths of 2'-10-3/4" and 7'-0", and a rear yard with a minimum depth of 27 feet., 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. 2018-168-BZ"), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 30, 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, February 4, 2020.

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**2019-77-BZ**

**CEQR #19-BSA-120K**

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** – 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** –

The decision of the Department of Buildings (“DOB”), dated April 12, 2019, acting on DOB New Building Application No. 321128999, reads in pertinent part:

“The proposed PCE in a C2-4(R7D) zoning district is contrary to Section 32-10 and requires a special permit from the BSA.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, in an R7D (C2-4) zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10.

A public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, with continued a hearing on February 4, 2020, and then to decision on February 4, 2020 same date. Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 8, Brooklyn, recommends approval of this application.

The Premises are located on the southeast corner of Fulton Street and Franklin Avenue, in an C7D (C2-4) zoning district, in Brooklyn. The Premises have approximately 200 feet of frontage along Fulton Street, 198 feet of frontage along Franklin Avenue, 25,744 square feet of lot area, and are under development with a ten-story with cellar mixed-use commercial and residential building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable

remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE will occupy 868 square feet of floor area on the first floor with a ground floor lobby, and 14,231 square feet of floor space in the cellar with offices, reception, retail, activity areas and locker rooms. The PCE will 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. The applicant represents that the PCE use is consistent with the commercial area in which it is located. In addition, the applicant submits that sound attenuation measures, including rubber flooring in the activity areas and demising walls with batt insulation, will be provided within the space so as to exceed a level of 45 dBA in other portions of the building. 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.

The applicant states that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant represents that the PCE will be fully sprinklered and that an approved fire alarm will be installed in the entire PCE space. By letter dated November 23, 2019, the Fire Department states that applications have been filed with the Department of Buildings and Fire Department for installation of new fire suppression and detections systems, which have been approved and permitted. An application for an operating permit for the Public Assembly space must be filed with the Department of Buildings borough office upon issuance of a special permit from the Board of Standards and Appeals and prior to the occupancy of the space. The Bureau’s Construction, Demolition and Abatement (“CDA”) unit has inspected these premises and, to date, found the site to be in compliance with the applicable Fire Department rules and regulations. 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.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of

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the proposed Type II action noted in the CEQR Checklist No. 19-BSA-120K, dated 04/23/2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 *to permit*, in an R7D (C2-4) zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “January 15<sup>th</sup>, 2020”- five -(5) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 4, 2030;

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

THAT minimum three-foot-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 shall be installed 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 and no vibration or sound shall create a disturbance to neighbors;

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. 2019-77-BZ”), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 9, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2020.

## 2019-159-BZ

### CEQR #19-BSA-137M

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 26, 2019, acting on DOB Alteration Type I Application No. 123871667, reads in pertinent part:

“Proposed “physical culture establishment” in a C6-2A 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”.

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C6-2A zoning district and in the Tribeca East Historic District, the operation of a physical culture establishment (“PCE”), contrary to Z.R. § 32-10.

A public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, with continued hearings on February 4, 2020, and then to decision on that same date. Commissioner Sheta performed an inspection of the site and surrounding neighborhood. Community Board 1, Manhattan, recommends approval of this application. The Premises are located on the northeast corner of Church Street and Leonard Street, within a C6-2A zoning district and in the Tribeca East Historic District, in Manhattan.

The Premises have approximately 50 feet of frontage along Church Street, 40 feet of frontage along Leonard Street, 1,996 square feet of lot area and are occupied by an existing five-story with cellar and sub-cellar mixed use residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon

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other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 368 square feet of floor area on the first floor, for PCE access; 1,882 square feet of floor space on the cellar level with a fitness studio, office, changing room, A/V room, staff break room, and closet; and 1,498 square feet of floor space on the sub-cellar level, with a shower, restrooms, changing room, storage rooms, and a massage room. The PCE has been in operation since March 4, 2019, as “NOVA Fitness,” with the following hours of operation: Monday through Friday, 6:00 a.m. to 8:00 p.m.

The applicant represents that the PCE use is consistent with mixed-use character of the surrounding area, which has compatible uses including other gyms, offices, eating and drinking establishments, and retail stores and, based on the character of the area and existing PCE uses, the PCE use at the Premises will not alter the essential character, future use, or development of the surrounding area. In addition, the applicant submits that sound attenuation measures—including a suspended acoustic ceiling, sound-attenuated stud walls, and a 3/8-inch thick layer of rubber flooring in the studio area—have been provided within the space so as to not disturb other tenants in the building. 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.

The applicant states that the PCE provides facilities for classes, instructions and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the PCE is fully sprinklered. By letter dated November 23, 2019, the Fire Department states these premises are protected by a sprinkler system, for which the current permit has expired; an inspection will be performed by the Bureau’s Sprinkler/Standpipe unit and a report will be issued; the Fire Department objected to this application due to lack of a fire alarm system for the space and would recommend a fire alarm system be installed due to the occupant load and use in the sub-cellar and cellar space; based upon the foregoing, the Fire Department will support the Board’s decision with respect to the application; the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations. In response to the Fire Department’s

concerns, the applicant represents that it will install a fire alarm system in the PCE and will work with a consultant to do so.

By Certificate of No Effect (“CNE”) CNE-19-31362, issued October 30, 2018, the Landmarks Preservation Commission permitted work consisting of interior alterations at the sub-cellar, cellar and first floors, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical, and HVAC work. By CNE-19-38232, issued April 11, 2019, the Landmarks Preservation Commission permitted interior alterations only at the sub-cellar through first floor, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing, electrical, and HVAC work.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA137M, dated May 24, 2019.

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

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 Z.R. §§ 73-36 and 73-03; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 4, 2020”-Six (6) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 4, 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 the PCE shall remain fully sprinklered, and the applicant will continue working with the Fire Department with respect to the installation of a fire alarm system, including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection

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of the interior fire alarm to an FDNY-approved central station, 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. 2019-159-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 12, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2020.

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## 2019-167-BZ

### CEQR #19-BSA-144X

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** – 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 –

The decision of the Department of Buildings (“DOB”), dated May 30, 2019, acting on DOB Alteration Type I

Application No. 220703585, reads in pertinent part:

“The proposed PCE in a R6/C2-4 zoning district is contrary to Section 32-10 and requires a special permit from the BSA.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located partially within an R6(C2-4) zoning district and partially within an R6(C1-4) zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10.

A public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, with a continued hearing on February 4, 2020, and then to decision on that same date. Community Board 7, the Bronx, waived its recommendation of this application. The Board was in receipt of one form letter in support of the application.

The Premises are located on the northwest corner of Jerome Avenue and West Fordham Road, on a site located partially within an R6(C2-4) zoning district and partially within an R6(C1-4) zoning district, in the Bronx. The Premises have approximately 214 feet of frontage along Jerome Avenue, and 165 feet of frontage along West Fordham Road, 32,810 square feet of lot area and is occupied by an existing four-story with cellar commercial building.

The Board has exercised jurisdiction over the Premises since March 23, 1926, when, under BSA Cal. No. 1059-25-BZ, the Board granted a variance, to permit the commercial use of a theater, on condition that the building not be erected within 12 feet of the rear property line, and there be no openings in the rear gable wall other than the emergency exits required by law; the exterior face of the rear and gable wall be finished in light color face brick; all permits necessary for the prosecution of the work be obtained within nine months, by December 23, 1926, and the building completed within eighteen months, by September 23, 1927. On May 23, 1961, under BSA Cal. No. 1059-25-BZ, the Board amended the variance to permit the alteration of an existing theatre and store on condition that the work be done in accordance with the drawings filed with the application; the tunnel at the north end of the property be used for loading and unloading for the Lohmann store area in such a way that the exit facility is maintained; all laws, rules and regulation applicable be complied with; all permits be obtained, all work completed and a certificate of occupancy obtained within one year, by May 23, 1962. On March 25, 1986, under BSA Cal. No. 1059-25-BZ, the Board further amended the variance to change the use of the portion of the fourth floor in the C2-2 district, from office and trade school to trade school use without providing the required additional loading berth, on condition that the work substantially conform to revised drawing of proposed conditions submitted with the application and other than as amended, the resolution be complied with in all respects.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize

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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.

The PCE is proposed to be located only within the R6(C2-4) zoning district portion of the site. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available. The subject PCE will occupy 728 square feet of floor area on the first floor with the entrance lobby and stair and elevator access to the PCE, and 17,657 square feet of floor area on the second floor with a reception desk, exercise areas, offices, locker rooms with restrooms and showers, and storage space. The PCE will operate as “Blink Fitness”, with the following hours of operation: Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.

The applicant represents that the PCE use is consistent with the commercial area in which it is located which includes other commercial uses like restaurants, retail, and grocery stores. In addition, the applicant submits that, while no noise issues are anticipated because the PCE will be located within a commercial building, sound attenuation measures will be provided within the space so as to not disturb other tenants in the building. These measures will include rubber flooring in activity areas and demising walls with batt insulation. 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.

The applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant represents that the PCE will be fully sprinklered and that an approved fire alarm will be installed in the entire PCE space. By letter dated February 1, 2020, the Fire Department states that, while these premises are protected by a standpipe and sprinkler suppression systems and a fire alarm system with current permits, the Department is concerned with the proposed means of egress through the rear yard of the premises and requested additional time to conduct inspections.

By correspondence dated February 4, 2020, the Fire Department states that it has reviewed revised plans, dated February 4, 2020, and that the architect has provided a note on the plans that the rear yard will be maintained free and clear of any obstructions; while inspectors are visiting the

site to confirm that the rear yard is maintained free of obstruction, the Fire Department has no further objections to this application; failure to comply in maintaining the rear yard free of obstruction will result in a vacate order for the entire premises and summons issued to the property owner; if a special permit is granted by the BSA, units in the Bureau of Fire Prevention that are responsible for conducting inspections at these premises will be provided a copy of the resolution and will enforce same for non-compliance. By correspondence dated February 5, 2020, the Fire Department states that a member of the Bureau of Fire Prevention conducted an inspection on February 4, 2020, of the rear yard and exit passageway to Jerome Avenue and observed it to be free and clear of any obstructions at the time of inspection; units of Fire Prevention who conduct annual inspections have been made aware of the rear exit passageway and will issue the appropriate order to correct if there is non-compliance.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA144X, dated June 10, 2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 *to permit*, on a site located partially within an R6(C2-4) zoning district and partially within an R6(C1-4) zoning district, the operation of a physical culture establishment, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 4, 2020- Five (5) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 4, 2030;

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

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

THAT the rear yard and passageway shall be maintained free and clear of any obstruction at all times;

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THAT a sprinkler system and an approved interior fire alarm system shall be installed and maintained in the entire PCE space, 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, 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. 2019-167-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 1, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2020.

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**CORRECTION: This resolution adopted on February 4, 2020, under Calendar No. 2019-170-BZ, is hereby corrected to read as follows:**

## **2019-170-BZ**

### **CEQR #19-BSA-146M**

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**

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

### **THE VOTE** –

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

Negative:.....0

### **THE RESOLUTION** –

The decision of the Department of Buildings (“DOB”), dated May 13, 2019, acting on DOB Alteration Type I Application No. 121205034, reads in pertinent part:

“ZR 32-15.e, 32-31, 73-36: Proposed physical culture establishment is not permitted as-of-right in C6-2A zoning district. The use is contrary to section 32-10 of the Zoning Resolution and requires a special permit from the Board of Standards and Appeals under section 73-36 of the Zoning Resolution.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, within a C6-2A zoning district and the Tribeca East Historic District, the operation of a physical culture establishment (“PCE”) on the second and third floors of an existing five-story building, contrary to Z.R. § 32-10.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, with a continued hearing on February 4, 2020, and then to decision on that same date. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 1, Manhattan, recommends approval of this application.

The Premises are located on the west side of Broadway, between White Street and Walker Street, within a C6-2A zoning district, in Manhattan. The Premises have approximately 62 feet of frontage along Broadway, 84 feet of depth, 5,045 square feet of lot area and is occupied by an existing five-story with cellar building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE will occupy approximately 4,739 square feet on the second floor consisting of locker rooms, a sauna, a steam room, and a Hamam (Turkish Bath), and approximately 4,161 square feet on the third floor, consisting of three dance studios. The PCE will operate as “High Court”, with the following hours of operation: 5 a.m. to 12 a.m., daily. The applicant represents that the PCE is so located to not impair the essential character of the surrounding area because PCE use is consistent with the commercial area in which it is located and the PCE is fully contained within the envelope of an existing building. In addition, the applicant submits that sound attenuation

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measures will be provided within the space so as to not disturb other tenants in the building. 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.

The applicant states that the PCE will provide training, instruction, and programs for physical improvement, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory. The applicant represents that the PCE will be fully sprinklered and that an approved fire alarm will be installed in the entire PCE space.

By letter dated January 12, 2020, the Fire Department states that these premises are protected by fire suppression systems (combination standpipe and sprinkler) and has been tested satisfactorily and witnessed by members of Fire Prevention; an application for the installation of a fire alarm system has been filed with the Fire Department (#39213814) for review; based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

By Certificate of No Effect (“CNE”) CNE-19-36791, issued August 22, 2019, the New York City Landmarks Preservation Commission (“LPC”) permitted exterior alterations at the storefront at the first floor of the east (Broadway) façade, including removing modern cladding and metal and glass storefront infill, featuring shouldered transom windows, three pairs of wood and glass doors, and five display windows and bulkheads and an elevator bulkhead at the roof, set back from the west (rear) parapet; installing metal copings and flashing at the inboard face of the west parapet; installing black finished metal railings and dunnage railings at the main roof and interior alterations at the sub-cellar through fifth floors.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA146M, dated June 12, 2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination

under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to permit, within a C6-2A zoning district and the Tribeca East Historic District, the operation of a physical culture establishment on the second and third floors of an existing five-story building; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 4, 2020”- Eleven (11) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 4, 2030;

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

THAT minimum three-foot-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 installed 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, 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. 2019-170-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.

THAT the Department of Buildings must 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 4, 2021.

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## 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 April 7, 2020, at 10 A.M. for continued hearing.

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## 2019-25-BZ

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

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to April 28, 2020, at 10 A.M., for adjourned hearing.

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## 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 April 7, 2020, at 10 A.M. for continued hearing.

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## 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 28<sup>th</sup> Street, Block 8791, Lot 120, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M. for continued hearing.

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## 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 April 21, 2020, at 10 A.M. for continued hearing.

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## 2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to March 3, 2020, at 10 A.M., for continued hearing.

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**REGULAR MEETING  
TUESDAY AFTERNOON, FEBRUARY 4, 2020  
1:00 P.M.**

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

**ZONING CALENDAR**

**2019-37-BZ**

**CEQR #19-BSA-095M**

APPLICANT – Mango & Lacoviello, LLP, for 58 Corner LLC, owner.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (ILoveKickboxing) to be located on the 1st floor of an existing building contrary to ZR §32-10. C6-2/C4-7, R8/R10 zoning districts.

PREMISES AFFECTED – 600 West 58<sup>th</sup> Street, aka 847 11<sup>th</sup> Avenue, the property is located on the corner of 11<sup>th</sup> Avenue and west 58<sup>th</sup> Street. Block 1105, Lot 36. Borough of Manhattan.

**COMMUNITY BOARD #4M**

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

**THE VOTE** –

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

Negative:.....0

**THE RESOLUTION** –

The decision of the Department of Buildings (“DOB”), dated January 30, 2019, acting on New Building Application No. 121184609, reads in pertinent part:

“Z.R. 73-36: Proposed Physical Culture Establishment in C4-7 zoning district is contrary to Z.R. 32-10 and Z.R. 32-31 and must be referred to the NYC Board of Standards and Appeals for approval of a special permit under Z.R. 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, the operation of a physical culture establishment on a portion of the first floor of an existing ten-story, with cellar, mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood. Community Board 4, Manhattan, recommends approval of this application.

The Premises is located on the southwest corner of West 58th Street and 11th Avenue, partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, in Manhattan. The Premises have approximately 250 feet of frontage along

West 58th Avenue, 100 feet of frontage along 11th Avenue, 25,105 square feet of lot area, and are occupied by ten-story, with cellar, mixed-use residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 1,036 square feet of floor area on the first floor with areas for reception, kickboxing, pro shop, common lockers, restrooms, sitting area, and storage. The PCE has been in operation as “ilovekickboxing.com” since January 23, 2019, with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m. The applicant represents that 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 located in an existing building within a heavily trafficked and predominantly commercial area. In addition, the applicant submits that sound attenuation measures have been provided within the PCE space so as to not disturb other tenants in the building. These measures include the installation of two layers of gypsum wallboard on each side of metal studs with sound attenuation insulation consisting of batt insulation, with isolators and insulation infill throughout the studio floors, suspended gypsum board ceiling hung with isolation hangers on the ceiling. 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.

The applicant states that the PCE provides boxing-based workouts designed to facilitate fat burning, cardiovascular health, muscle toning and wellness. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report which the Board has deemed to be satisfactory.

The applicant 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. By letter dated February 3, 2020, the Fire Department states these Premises are protected by a

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# MINUTES

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combination fire suppression (standpipe and sprinkler) system and a fire alarm system as per the current NYC Construction Code; based on the foregoing the Department has no objection to the application; the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA095M, dated November 21, 2019.

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

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 Z.R. §§ 73-36 and 73-03 *per*mit, on a site located partially within a C4-7 zoning district and partially within a C6-2 zoning district, and in the Special Clinton District, the legalization of a physical culture establishment on a portion of the first floor of an existing ten-story, with cellar, mixed-user residential and commercial building, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 21, 2019”- ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 23, 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. 2019-37-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 11, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2020.

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## 2019-165-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Zev Brachfeld, owner.

SUBJECT – Application June 3, 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); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1375 East 26<sup>th</sup> Street, East side of East 26<sup>th</sup> Street between Avenue M and Avenue N. Block 7662, Lot 14. Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## 2019-188-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s USA LLC, owner.

SUBJECT – Application July 12, 2019 - 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.

PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, with frontages on East Gun Hill Road, Tenbroeck Avenue and Pearsall Avenue. Block 4617, Lot 40. Borough of the Bronx.

## COMMUNITY BOARD #11BX

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to April 28, 2020, at 10 A.M., for continued hearing.  
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**2019-271-BZ**

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless, for 3708 Hylan Boulevard, Corp., owner.  
SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3-A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, property is located on the north side of Mansion Avenue, 174.74' +/- west of the corner formed by the intersection of Mansion Avenue and Fairlawn Street. Block 5190, Lot 85. Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.  
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*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 105, No. 7

February 21, 2020

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## DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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2019-268-BZ	1938 Coney Island Avenue, Brooklyn

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# DOCKETS

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New Case Filed Up to February 11, 2020  
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# CALENDAR

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## REGULAR MEETING MARCH 3, 2020, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 3, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### SPECIAL ORDERED CALENDAR

#### **322-98-BZ**

APPLICANT – Law Office of Fredrick A. Becker for HUSA Management Co., LLC, owner; TSI Harlem USA LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (New York Sports Club) which expired on March 23, 2019 Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125<sup>th</sup> Street, Block 1951, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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#### **10-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Langston Retail LLC, owner; TSI West 145 LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) to allow the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on December 1, 2017; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C4-4D zoning district.

PREMISES AFFECTED – 86-68 Bradhurst Avenue aka 303 West 145<sup>th</sup> Street, Block 2045, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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#### **58-13-A**

APPLICANT – Law Office of Jay Goldstein, for Sylvaton Holdings LLC, owner.

SUBJECT – Application December 23, 2019 – Amendment of a previously approved application permitting the development of a 3-story residential building located within the bed of a mapped street contrary to General City Law §35. R4 and M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place (28, 32 & 35 Sylvaton Terrace), Block 2827, Lot(s) 200, 203, 205, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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#### **175-14-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, for 1162 Broadway LLC, owner.

SUBJECT – Application May 24, 2019 – Amendment of a previously approved Variance (§72-21) which approved the construction a new 14-story hotel building. The amendment seeks to change the use of the proposed building from hotel use to office use; Extension of Time to Complete Construction which expired on March 25, 2019; Waiver of the Board’s Rules. M1-6 Madison Square North Historic District.

PREMISES AFFECTED – 1162 Broadway, Block 829, Lot 28, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### APPEALS CALENDAR

#### **2018-30-A**

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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#### **2019-82-A**

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019 – 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 district.

PREMISES AFFECTED – 430 St. Marks Place, Block 16, Lot 120, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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#### **2019-281-A**

APPLICANT – New Cingular Wireless PCS, LLC, for Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a Forest Promenade Shopping Center, Block 1479, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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# CALENDAR

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**REGULAR MEETING  
MARCH 3, 2020, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 3, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**ZONING CALENDAR**

**2019-28-BZ**

APPLICANT – Akerman LLP, for 485 Kings Corp., owner; OTB2NY LLC, lessee.

SUBJECT – Application February 5, 2019 – 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.

PREMISES AFFECTED – 485 Kings Highway, Block 6658, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2019-204-BZ**

APPLICANT – Akerman LLP, for QSB Northern LLC, owner; 29-22 Northern Boulevard Fitness Group LLC, owner.

SUBJECT – Application August 14, 2019 – 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.

PREMISES AFFECTED – 29-22 Northern Boulevard, Block 239, Lot 7501, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**2019-260-BZ**

APPLICANT – Law Office of Jay Goldstein, for 233 East 34<sup>th</sup> Street LLC, owner; RH 34 LLC, lessee.

SUBJECT – Application September 9, 2019 – 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.

PREMISES AFFECTED – 233 East 34<sup>th</sup> Street, Block 915, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**2019-274-BZ**

APPLICANT – Akerman LLP, for Metropolitan Management LLC, owner; Rowgatta 31 W 14<sup>th</sup> LLC, lessee. SUBJECT – Application October 16, 2019 – 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.

PREMISES AFFECTED – 31 West 14<sup>th</sup> Street, Block 816, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Carlo Costanza, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 11, 2020  
10:00 A.M.**

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

-----

## SPECIAL ORDER CALENDAR

**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 4-00-BZ, is hereby corrected to read as follows:**

### 4-00-BZ

APPLICANT – Eric Palatnik, P.C., for 243 West 30<sup>th</sup> Street Realty LLC, owner; West Garden Inc., lessee.

SUBJECT – Application August 9, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (West Garden) which expires on May 30, 2020. M1-5 zoning district.

PREMISES AFFECTED – 243 West 30<sup>th</sup> Street, Block 780, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

### THE VOTE –

Affirmative: Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....3

Negative:.....0

Abstain: Chair Perlmutter.....1

Absent: Vice-Chair Chanda.....1

### THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which will expire on May 30, 2020.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the north side of West 30<sup>th</sup> Street between Eight Avenue and Seventh Avenue, in an M1-5 zoning district, in Manhattan. The site has approximately 38 feet of frontage along West 30<sup>th</sup> Street, 99 feet of depth, 3,705 square feet of lot area and is occupied by an existing 12-story plus cellar and mezzanine commercial building.

The Board has exercised jurisdiction over the Premises since May 30, 2000, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a physical culture establishment (“PCE”) on a portion of the first floor and mezzanine of an existing 12-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; the hours of operation for the PCE be limited to 10:00 a.m. to 12:00 midnight; 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; the special permit be limited to a term of ten years, to expire on May 30, 2010; 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 two years. On September 14, 2004, under the subject calendar number, the Board amended the resolution to legalize the expansion of the PCE to the cellar level on condition that all work substantially conform to drawings filed with the application; all conditions from the prior resolution remain in effect and all conditions required to be placed on the certificate of occupancy remain; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings / other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. On May 25, 2010, under the subject calendar number, the Board further amended the resolution to extend the term for a period of ten years, from May 30, 2010, to expire on May 30, 2020, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the term of the grant expire on May 30, 2020; 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/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The term to expire, the applicant now seeks an extension. The applicant represents that the PCE continues to operate as “West Garden” and occupies 5,274 square feet in the subject building on the cellar level (1,884 square feet of floor space), first floor (2,870 square feet of floor area), and mezzanine (1,394 square feet of floor area).

By letter dated February 9, 2020, the Fire Department

# MINUTES

states that these premises are protected by a standpipe and sprinkler fire suppression systems that have been inspected by the Fire Department and its permits are current; based on the foregoing, the Department has no objection and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated May 30, 2000, as amended through May 25, 2010, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring May 30, 2030; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 11, 2020”-Eight (8) sheets. *on further condition*:

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 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. 4-00-BZ”), shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 17, 2021;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 185-13-BZ, is hereby corrected to read as follows:**

## **185-13-BZ**

APPLICANT – Eric Palatnik, P.C., for 97 Franklin Avenue, LLC, owner.

SUBJECT – Application December 20, 2019 – Extension of Time to Complete Construction of a previously approved Variance (72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00) which expired on February 10, 2019; Waiver of the Board’s Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Block 899, Lot 22, Borough of Brooklyn.

## **COMMUNITY BOARD #3BK**

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

THE VOTE –

Affirmative: Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....3

Negative:.....0

Abstain: Chair Perlmutter.....1

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to complete construction, pursuant to a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction of a three-story multiple dwelling and expired on February 10, 2019.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date.

The Premises are located on the east side of Franklin Avenue between Park Avenue and Myrtle Avenue, in an M1-1 zoning district, in Brooklyn. The site has approximately 26 feet of frontage along Franklin Avenue, 100 feet of depth, 2,600 square feet of lot area and is vacant.

The Board has exercised jurisdiction over the Premises since February 10, 2015, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the construction of a three-story multiple dwelling (Use Group 2), contrary to Z.R. § 42-00, 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 building: a maximum of 4,933 square feet of floor area (1.9 floor area ratio (“FAR”)), two dwelling units, a maximum lot coverage of 64 percent, a minimum rear yard depth of 30’-0”, a minimum front yard depth of 6’-0” and a maximum building height of 40’-0”, as indicated on the BSA-approved plans; the layouts of the dwelling units be as reviewed and approved by DOB; all Department of Buildings (“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 February 10,

# MINUTES

2019; 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 other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The time to have completed construction having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(c)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that no work has commenced but anticipates completing construction within four years.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of 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 February 10, 2015, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, expiring October 17, 2024; *on condition*:

THAT the following are the bulk parameters of the building: a maximum of 4,933 square feet of floor area (1.9 FAR), two dwelling units, a maximum lot coverage of 64 percent, a minimum rear yard depth of 30'-0", a minimum front yard depth of 6'-0" and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the layouts of the dwelling units will be as reviewed and approved by DOB;

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 October 17, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 2017-207-BZ, is hereby corrected to read as follows:**

## 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 #7

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

## THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

## THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy in connection with a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on August 21, 2019.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood.

The Premises are located on the southeast corner of Broadway and West 70<sup>th</sup> Street, partially within a C4-6A zoning district and partially within an R8B zoning district, and in the Upper West Side/Central Park West Historic District, in Manhattan. The PCE is wholly in the C4-6A portion of the site. The site has approximately 113 feet of frontage along Broadway, 146 feet of frontage along West 70th Street, 12,040 square feet of lot area and is occupied by a 12-story, with cellar, mixed-use commercial and residential building.

The Board has exercised jurisdiction over the Premises since August 21, 2018, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a physical culture establishment ("PCE") on a portion of the second floor of the subject building 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 of ten (10) years, expiring May 23, 2027; there be no change in

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# MINUTES

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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 maintained leading to the required exits and that pathways be maintained unobstructed, including from any gymnasium equipment; the PCE remain fully sprinklered, as indicated on the Board-approved plans; sound attenuation be maintained in the PCE; Local Law 58/87 shall be complied with as approved by the Department of Buildings ("DOB"); the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by August 21, 2019; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant represents that the PCE continues to operate as "CorePower Yoga" and has not undergone any changes since the Board's 2018 grant, except that the fire sprinklers have been installed, as per plans.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated August 21, 2018, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for 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 17, 2021;

THAT this grant shall be limited to a term of ten (10) years, expiring May 23, 2027;

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 be maintained unobstructed, including from any gymnasium equipment;

THAT the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE;

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

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

THAT the conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy or temporary certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-207-BZ"), or DOB sign-off for the second floor shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 17, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**16-36-BZ**

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

SUBJECT – Application February 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (BP) with accessory uses which expired on November 1, 2017; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue aka 1301 White Plains Road, Block 3880, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

**ACTION OF THE BOARD** – Laid over to April 28, 2020, at 10 A.M., for continued hearing.  
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**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 March 17, 2020, at 10 A.M., for continued hearing.  
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## 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 August 4, 2020, at 10 A.M., for adjourned 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 23<sup>rd</sup> Street, Block 7658, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M., for adjourned hearing.

## 62-15-BZ

APPLICANT – Glen V. Cutrona, AIA, for 139 Bay Street Point, LLC, owner.

SUBJECT – Application December 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a residential conversion and enlargement of a two-story commercial building which expires on January 12, 2020.

PREMISES AFFECTED – 139 Bay Street, Block 1, Lot(s) 10, 17, 198, 19, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to April 21, 2020, 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 November 6, 2019 – Amendment of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home contrary to the previous Board approval. R2 zoning district.

PREMISES AFFECTED – 1367 East 24<sup>th</sup> Street, Block 7660, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 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** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on Alteration Type I Application No. 500254814 (the “Alteration Type I Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, with continued hearings on January 14, 2020, and February 11, 2020, and then to decision on that date. Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the southwest corner of Maguire Court and Maguire Avenue, in an R3X zoning district and in the Special South Richmond District, on Staten Island. The Premises have approximately 137 feet of frontage along Maguire Court, 290 feet of frontage along Maguire Avenue, 33,323 square feet of lot area, and are occupied by a two-story, plus cellar, single-family dwelling (the “Building”).

On January 13, 1998, DOB determined that the Building would comply with all applicable zoning regulations and issued an Alteration Type I permit authorizing work associated with the application to construct a one-family dwelling on January 22, 1998.

Effective September 25, 2002 (the “Effective Date”), the City amended the Zoning Resolution, changing the zoning district from an R3-2 zoning district to an R3X zoning district in the Special South Richmond Development District, such that enlarged Building as a three-story one-family residence is no longer permitted as of right, *see* ZR

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§§ 23-47 and 23-63.

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

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

As noted above, the record shows that the owner of the subject site obtained lawfully issued permits to construct the Building in accordance with the Alteration Type I Application before the Effective Date.

The applicant submitted evidence that, before the Effective Date and in accordance with the building permits authorizing work associated with the Alteration Type I Application, the owner had effected substantial construction to further development of the Building. In particular, the applicant submits that the Building had been constructed and occupied, but never signed-off by DOB, and required only the issuance of a certificate of occupancy prior to the Effective Date.

In response to questions from the Board at hearing, the applicant supplied photographs with timestamps indicating the constructed Building contained a foundation, exterior walls, interior wall framing, fixture installation, and floor finish installations. Accordingly, the record reflects that, before the Effective Date and in accordance with the building permits authorizing work associated with the Alteration Type I Application, the owner had effected substantial construction to further development of the Building.

The applicant submitted evidence that, before the Effective Date, substantial expenses had been incurred, totaling approximately \$331,420 (71 percent) of the total development cost of \$465,820. The applicant notes that these costs include construction costs (landscaping, plumbing, fixtures, furnishings, mechanical, architectural, and framing work), financing costs and fees, soft costs (including for architect, engineer, and expediting), insurance, and taxes. Accordingly, the record reflects that, before the Effective Date, the owner had incurred substantial expenses to further development of the Building.

The applicant submitted evidence that, if the right to continue construction of the Building were denied, the owner would suffer serious loss—that is, substantial economic harm. In particular, the applicant submits that redesigning the completed Building into a complying one-family residential building would require total demolition of the existing Building as approximately one-third of the Building would have to be removed in order to comply with the 30-foot rear yard setback line requirement; the roof would need to be torn down and lowered; and the perimeter wall height would need to be lowered. The applicant also submits that construction of the Building is complete and the owner requires only to obtain a certificate of occupancy for the Building. Because of the substantial nature of the losses pertaining to total demolition and reconstruction of the fully constructed Building to comply with height and setback requirements, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein. Accordingly, the record reflects that, if the right to continue construction of the Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

Accordingly, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the Alteration Type I 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 (“DOB”), acting on Alteration Type I Application No. 500254814 (the “Alteration Type I Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment on September 25, 2002, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years and six months, expiring December 3, 2023, 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; *on condition*:

THAT the Department of Buildings must conduct an audit to confirm compliance with all applicable provisions

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of the Zoning Resolution in effect before September 25, 2002.

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 2019-199-A, is hereby corrected to read as follows:**

**2019-199-A**

APPLICANT – Stuart Goode c/o Charles Weinstock, for 1039-1045 Madison Avenue Owner LLC c/o Naftali Group, owner.

SUBJECT – Application July 26, 2019 – 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.

PREMISES AFFECTED – 1045 Madison Avenue, Block 1491, Lot 151, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Appeal dismissed.

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

The building permit issued by the Department of Buildings on July 1, 2019, under New Building Application No. 121188366 (the “Permit”), authorized 1039–1045 Madison Ave Owner LLC (the “Owner”) to construct an 18-story mixed-use building with 63,311 square feet of floor area (the “New Building”) on a zoning lot with 13,152 square feet of lot area (the “Zoning Lot” or “Premises”) occupied by an existing 14-story building on Tax Lot 23 (the “Existing Building”).

This is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of Stuart Goode (“Appellant”), alleging errors in the Permit pertaining to whether the arrangement of the Zoning Lot with the New Building and the Existing Building does not comply with Section 28 of the Multiple Dwelling Law, pertaining to distance between buildings on a “lot,” and Section 23-711 of the Zoning Resolution, pertaining to distance between buildings containing dwelling units.

However, the Board need not reach these issues because the record reflects that the construction authorized by the Permit has changed so substantially that this appeal should instead be dismissed as moot.

**I.**

The Premises are located on the northeast corner of Madison Avenue and East 79th Street, in a C5-1 zoning district within the Special Madison Avenue Preservation District, in Manhattan. With 138 feet of frontage along Madison Avenue and 100 feet of frontage along East 79th

Street, the Zoning Lot is occupied by the Existing Building and the under-construction New Building.

As authorized by the Permit, the New Building on Lot 21 would contain 63,311 square feet of floor area on a merged zoning lot made up of Lot 21 and Lot 23 with a lot area 13,152 square feet. Approximately 2,990 square feet of the floor area to be constructed in the New Building would be unused floor area from Lot 23.

On January 15, 2020, the Department of Buildings approved a post-approval amendment to the Permit such that the Existing Building and the proposed building are no longer on the same zoning lot. As a result, the Permit now authorizes the proposed building to contain 60,268 square feet of floor area (the “Redesigned Building”) on a zoning lot with 6,032 square feet of lot area (the “New Zoning Lot”).

A public hearing was held on this appeal on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on the same date.

**II.**

The Department of Buildings and the Owner submit that this appeal should be dismissed because the approvals by the Department of Buildings that form the basis of the issues presented in this appeal are no longer in effect.

Although the issues presented by Appellant turn on the configuration of the Zoning Lot and distance between the New Building and the Existing Building on the same “lot” under M.D.L. § 28 and same “zoning lot” under Z.R. § 72-21, the latest drawings for the New Building approved by the Department of Buildings on January 15, 2020, reflect that the Zoning Lot no longer exists.

Instead, the latest DOB-approved drawings reflect that the Permit authorizes construction of the Redesigned Building with 60,268 square feet of floor area on the New Zoning Lot, which contains 6,032 square feet of lot area.

Notwithstanding these changed circumstances, Appellant contends that the creation of the New Zoning Lot is invalid because the Owner needs to record a declaration or waiver from all parties in interest to effectuate a zoning-lot subdivision; subdivision of the Zoning Lot to create the New Zoning Lot would create new non-compliances; legally required windows are still relevant; and the original issues would recur should the Owner attempt to recreate the Zoning Lot by effectuating another zoning-lot merger.

None of these arguments are persuasive for this appeal. Because the Board sits to review final determinations made by the Department of Buildings, all of these newly raised issues should be reviewed by the Department of Buildings in the first instance with respect to the Revised Zoning Lot. At hearing, Appellant acknowledged and the Department of Buildings confirmed that new zoning challenges to the Revised Zoning Lot were under consideration. Responses from the Department of Buildings to these challenges in the form of a new final determination could then form the basis of a new interpretive appeal, and the same could be said for any attempt by the Owner to recreate the Zoning Lot, though this concern appears to be pure speculation on Appellant’s

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part. Accordingly, it would be premature for the Board to consider in this appeal newly raised issues with respect to the New Zoning Lot.

Based on the foregoing, the Board finds that the circumstances underlying this appeal—namely, the continued existence of the Zoning Lot and the presence of the New Building on the same zoning lot as the Existing Building—are no longer in effect, rendering the basis of this interpretive appeal moot and the application incomplete. However, nothing herein shall prevent Appellant from filing a new interpretive appeal to challenge a Department of Buildings final determination with respect to the New Zoning Lot or the Revised Building.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *dismiss* this appeal for interpretation as moot.

Adopted by the Board of Standards and Appeals, February 11, 2020.

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## 2018-198-A

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

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

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

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to April 28, 2020, at 10 A.M., for adjourned hearing.

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## ZONING CALENDAR

### 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** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Commissioner Ottley-

Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

Adopted by the Board of Standards and Appeals, February 11, 2020.

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### 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 April 7, 2020, at 10 A.M. for continued hearing.

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### 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 95<sup>th</sup> 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.

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## 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 4<sup>th</sup> Street, Block 7156, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to March 17, 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 41<sup>st</sup> Street, Block 679, Lot 23, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to April 28, 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 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 April 7, 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 57<sup>th</sup> Avenue, Block 1845, Lot 41, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

## REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 11, 2020  
1:00 P.M.

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

## ZONING CALENDAR

**CORRECTION:** This resolution adopted on February 11, 2020, under Calendar No. 2019-72-BZ, is hereby corrected to read as follows:

## 2019-72-BZ

### CEQR #19-BSA-115M

APPLICANT – Kenneth K. Lowenstein, for Extell 4110 LLC, owner; TFC Partners Inc. dba NFC Amenity Management, lessee.

SUBJECT – Application April 8, 2019 – 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).  
PREMISES AFFECTED – 555 Tenth Avenue, Block 1069, Lot(s) 1001-1005, Borough of Manhattan.

### COMMUNITY BOARD #4M

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

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 8, 2019, acting on DOB New Building Application No. 121328116, reads in pertinent part:

“Proposed Physical Culture or Health Establishment in Zoning District C2-8 is not permitted as of right. A special permit is required from the Board of Standards and Appeals as per Z.R. 32-10, Z.R. 73-36”.

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C2-8 zoning district and in the Special Hudson Yards District, the operation of a physical culture establishment (“PCE”), contrary to Z.R. § 32-10.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 4, Manhattan, recommends approval of this application.

The Premises are bounded by Tenth Avenue to the east, West 40th Street to the south, and West 41st Street to

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the north, in a C2-8 zoning district and in the Special Hudson Yards District, in Manhattan. The Premises have approximately 198 feet of frontage along Tenth Avenue, 100 feet of frontage along West 40th Street, 70 feet of frontage along West 41st Street, 17,528 square feet of lot area and is occupied by a 53-story mixed-use commercial and residential building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 7,794 square feet of floor area on a portion of the ninth floor with a yoga room, swimming pool, fitness area and restrooms. The PCE has been in operation since December 2016, as “NFC Amenity Management,” with the following hours of operation: 5:00 a.m. to 10:00 p.m., daily. The applicant represents that the PCE use is so located so as not to impair the character of the surrounding area. In addition, the applicant represents that no noise issues are anticipated because the PCE use is separated from residential uses in the subject building by mechanical floors and spaces. 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.

The applicant states that the PCE provides facilities for classes, instructions and programs for physical improvement, body building, weight reduction, and aerobics, as well as a 1,534 square foot swimming pool. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated February 9, 2020, the Fire Department states these premises are protected by a standpipe and sprinkler fire suppression system that have been inspected and signed-off by the Department of Buildings; the fire alarm system was inspected by the Fire Department and permits are current; 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. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA115M, dated April 8, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. 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 Z.R. §§ 73-36 and 73-03 *to legalize*, in a C2-8 zoning district and in the Special Hudson Yards District, the operation of a physical culture establishment (“PCE”), contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received December 9, 2019”- Four (4) sheets, and *on further condition*:

THAT the exterior spaces are unrelated to the use of the PCE and shall not be used by the PCE or PCE members;

THAT this grant shall be limited to a term of ten years, expiring 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 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,

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as reviewed and approved by DOB;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-72-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 17, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 2019-183-BZ, is hereby corrected to read as follows:**

## **2019-183-BZ**

### **CEQR #20-BSA-001M**

APPLICANT – Eric Palatnik, P.C., for AR Global, owner; Amy Zhou, lessee.

SUBJECT – Application July 1, 2019 – 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.

PREMISES AFFECTED – 200 West 41 Street, Block 1012, Lot 7502, Borough of Manhattan.

### **COMMUNITY BOARD #5M**

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

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 31, 2019, acting on DOB Alteration Type I Application No. 123414206, reads in pertinent part:

“A #Physical Culture Establishment# is not allowed as-of-right in a C6-7 zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, in a C6-7 zoning district and the Special Midtown

District, the operation of a physical culture establishment, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the southwest corner of West 41st Street and Seventh Avenue, in a C6-7 zoning district and the Special Midtown District, in Manhattan. The Premises have approximately 100 feet of frontage along West 41st Street, 73 feet of frontage along Seventh Avenue, 7,275 square feet of lot area and are occupied by 20-story with cellar and mezzanine commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE will occupy 7,160 square feet of floor area on the third floor with reception, exercise areas, locker rooms with restrooms and showers, and storage spaces. The PCE will operate as “Mayweather Boxing + Fitness”, with the following hours of operation: Monday through Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m. The applicant represents that the PCE use will not impair the essential character of the surrounding area because it will be located in a commercial area where many PCE uses are found. In addition, the applicant submits that sound attenuation measures will be provided within the space so as to not disturb other tenants in the building, including gypsum wallboard, veneer base, an equalizer for the sound system, bag springs, treadmill and weight platforms, and supervision by trainers. 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.

The applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement, weight reduction, aerobics and martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the

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principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant represents that the PCE will be fully sprinklered and that an approved fire alarm system will be installed in the entire PCE space. By letter dated February 9, 2020, the Fire Department states these premises are protected by a combination fire suppression (standpipe and sprinkler) and fire alarm system as inspected by the Fire Department; 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. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA001M, dated July 1, 2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *permit*, in a C6-7 zoning district and the Special Midtown District, the operation of a physical culture establishment, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 11, 2020"- Eight (8) sheets; *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 11, 2030;

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

THAT minimum three-foot-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 shall be installed 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 and 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. 2019-183-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 13, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**CORRECTION: This resolution adopted on February 11, 2020, under Calendar No. 2019-254-BZ, is hereby corrected to read as follows:**

## **2019-254-BZ**

### **CEQR #20-BSA-020K**

APPLICANT – Law Office of Jay Goldstein, PLLC, for Red Hook Lane LLC, owner.

SUBJECT – Application September 3, 2019 – 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.

PREMISES AFFECTED – 415 Red Hook Lane, Block 00154, Lot 7501, Borough of Brooklyn.

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

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

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4

Negative:.....0

Absent: Vice-Chair Chanda.....1

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated July 26, 2019, acting on New Building Application No. 320626747, reads in pertinent part:

"Z.R. 73-36: Proposed physical cultural establishment in C6-4.5 zoning district is contrary to section Z.R. 32-10 and requires a special permit from the BSA (73-36)."

This is an application under Z.R. §§ 73-36 and 73-03

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to permit, in a C6-4.5 zoning district and the Special Downtown Brooklyn District, the legalization of a physical culture establishment (“PCE”) on portions of the cellar and first floor of an existing 21-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 2, Brooklyn, waived its recommendation of this application.

The Premises are located on the northeast corner of Red Hook Lane and Livingston Street, in a C6-4.5 zoning district and the Special Downtown Brooklyn District, in Brooklyn. The Premises have approximately 101 feet of frontage along Red Hook Lane, 112 feet of frontage along Livingston Street, 9,007 square feet of lot area and is occupied by a 21-story with cellar mixed-use residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 8,437 square feet of floor space as follows: 3,617 square feet of floor area on the first floor, containing a reception area and the studio, and 4,820 square feet of floor space in the cellar, used for a personal training studio, a locker area, an office, storage rooms, men’s locker room and women’s locker room. The PCE has been in operation as “Rumble Fitness” since September 2019, with the following hours of operation: Monday through Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 6:30 a.m. to 7:00 p.m. The applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the Premises has pedestrian access to rapid transit facilities within the vicinity. 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 isolating walls at the studio from the adjacent structure; studio walls with two layers, sound attenuated BATT insulation in stud cavities and layers of gypsum coreboard at outer side of studs; all flooring at the studio is one inch thick core rubber tile flooring; all penetration at

studio ceilings and walls are sealed mineral fiber insulation and caulked; and the ceiling at the studio is isolated from existing slab above. 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.

The applicant states that the PCE provides boxing-based workouts designed to facilitate fat burning, cardiovascular health, muscle toning and wellness and is a facility for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated February 9, 2020, the Fire Department states these premises are protected by a standpipe and sprinkler fire suppression system that have been inspected and signed-off by the Department of Buildings; the fire alarm system was inspected by the Fire Department and permits are current; 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. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA020K, dated September 4, 2019.

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

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 Z.R. §§ 73-36 and 73-03 to *permit*, in a C6-4.5 zoning district and the Special Downtown Brooklyn District, the legalization of a physical culture establishment (“PCE”) on portions of the cellar and first floor of an existing 21-story plus cellar mixed-use

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residential and commercial building, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 11, 2020”-Five (5) sheets; *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring September 1, 2029;

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

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

THAT an approved interior fire alarm system—including 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 installed and 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. 2019-254-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 13, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2020.

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## 2020-15-BZ

### CEQR #20-BSA-065R

APPLICANT – NYC Mayor’s Office of Housing Recovery, for Pavel Levter, owner.

SUBJECT – Application January 31, 2020 – 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 – 787 Patterson Avenue, Block 3810, Lot 37, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

**THE VOTE TO GRANT** –

Affirmative: Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....3

Negative:.....0

Absent: Chair Perlmutter and Vice-Chair Chanda.....2

**THE RESOLUTION** –

This is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to Z.R. § 64-92, to permit, in an R3-1 zoning district, the alteration and elevation of an existing semi-detached one-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, distance between buildings, rear yards, and lot width, contrary to Z.R. §§ 23-461, 23-47, and 23-32.

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. In furtherance of the City’s effort to rebuild 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). The Board notes that this application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6).

The Premises are located on the west side of Patterson Avenue, between Mapleton Avenue and Hempstead Avenue, in an R3-1 zoning district, in Staten Island. The Premises originally had approximately 20 feet of frontage along Patterson Avenue, 100 feet of depth, 2,000 square feet of lot area, and are occupied by an existing semi-detached one-family residence. The Premises now have approximately 18 feet of frontage along Patterson Avenue, 100 feet of depth, and 1,881 square feet of lot area.

The Board has exercised jurisdiction over the Premises since March 8, 2016, when, under BSA Cal. No. 2016-2629-A, the Board granted a waiver of General City Law § 35 to permit the elevation of the existing residence on a portion of a site that lies within the bed of a mapped street.

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This waiver was conditioned, *inter alia*, as follows: that no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; that if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply; that if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; that if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply; and that, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will 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; (3) the underside of the building, where the foundation is not completely closed, shall have an exterior assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32'-0".

The applicant now seeks a special permit, under Z.R. § 64-92, to allow the alteration and elevation of an existing semi-detached one-family residence, resulting in a side yard of 6.01 feet to the south; a distance of 6.6 feet to the adjacent building to the south; a rear yard with a depth of 29.2 feet; and a minimum lot width of 17.93 feet. However, at the Premises, a side yard with a minimum depth of 8 feet is required under Z.R. § 23-461; a minimum distance of 8 feet to the adjacent building to the south is required under Z.R. § 23-461; a rear yard with a depth of 30 feet is required under Z.R. § 23-47; and a minimum lot width of 18 feet is required under Z.R. § 23-32.

The applicant states that, in accordance with Z.R. § 64-92(a), the need to elevate the existing residence, which, as it existed, was non-compliant with regulations for side yards, distance to adjacent buildings, and rear yards, creates practical difficulties in complying with flood-resistant construction standards without the modification of the above requirements because of complications during elevation, which resulted in a reduced lot size for the Premises, and waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards.

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 Z.R. § 64-92(b) is inapplicable in this case.

The applicant states that, pursuant to Z.R. § 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.

The applicant states that the neighborhood is characterized by detached and semi-detached dwellings, and 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.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA065R, dated January 31, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. § 6492 to *permit*, in an R3-1 zoning district, the alteration and elevation of an existing semi-detached one-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, distance between buildings, rear yards, and lot width, contrary to Z.R. §§ 23-461, 23-47, and 23-32; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 10, 2020"—Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a side yard of 6.01 feet to the south, a distance of 6.6 feet to the adjacent building to the south, a rear yard with a depth of 29.2 feet, and a minimum lot width of 17.93 feet, as illustrated on the Board-approved drawings;

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer

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# MINUTES

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main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will 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; (3) the underside of the building, where the foundation is not completely closed, shall have an exterior assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32'-0";

THAT this approval shall be limited to the Build It Back program;

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four years, by February 11, 2024;

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

THAT all conditions from 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 11, 2020.

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**2018-146-BZ**

APPLICANT – Eric Palatnik, P.C., for Yehoshua Augenbaum, owner.

SUBJECT – Application September 7, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (FAR, Lot Coverage and Open Space); ZR §23-621(b) (Perimeter Wall Height); ZR §23-47 (Rear Yard) and ZR §23-461 (Side Yard). R2 zoning district.

PREMISES AFFECTED – 1315 East 24<sup>th</sup> Street, Block 7660, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to March 24, 2020, at 10 A.M., for continued hearing.

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**2019-268-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1937 Coney Island LLC, owner.

SUBJECT – Application September 23, 2019 – 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.

PREMISES AFFECTED – 1938 Coney Island Avenue, Block 6617, Lot 0045, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*



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# BULLETIN

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

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Volume 105, Nos. 8-9

March 6, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

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863-48-BZ	259-16 Union Turnpike, Queens
764-56-BZ	200-05 Horace Harding Expressway, Queens
42-97-BZ	93-20 Astoria Boulevard, Queens
2016-4302-A thru 2016-4326-A	92-120 Cupidity Drive and 201 to 225 Avidita Place, Staten Island
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**2020-18-BZ**

920 Shore Boulevard, Block 08746, Lot(s) 107, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area). R3-1 zoning district R3-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING MARCH 17, 2020, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 17, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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## SPECIAL ORDER CALENDAR

### 58-30-BZ

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens  
**COMMUNITY BOARD #4Q**

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### 10-99-BZ

APPLICANT – Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC dba New York Sports Club, lessee.

SUBJECT – Application November 20, 2019 – 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 October 26, 2019. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, Block 2705, Lot 135, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### 33-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RCPI Landmark Properties LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application November 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expired on January 11, 2020. C5-2.5 and C5-3 Midtown Special Purpose district. Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 630 5<sup>th</sup> Avenue aka 40-60 Rockefeller Plaza, 31-41 W. 50<sup>th</sup> Street, 32-40 W. 51<sup>st</sup> Street, Block 1266, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for PGREF/1633 Broadway Tower, L.P., owner; Equinox 50<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expires on January 11, 2020. C6-7 Midtown Special Purpose District.

PREMISES AFFECTED – 1633 Broadway, Block 1022, Lot 43, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## REGULAR MEETING MARCH 17, 2020, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 17, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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## ZONING CALENDAR

### 2019-196-BZ

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

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

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

**COMMUNITY BOARD #5M**

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### 2019-267-BZ

APPLICANT – Eric Palatnik, P.C., for Rochdale Village, Inc., owner; CF Rochdale, LLC, lessee.

SUBJECT – Application September 19, 2019 – 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.

PREMISES AFFECTED – 165-98 Baisley Boulevard, Block 12495, Lot 2, Borough of Queens.

**COMMUNITY BOARD #12Q**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 25, 2020  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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 44<sup>th</sup> Street, Block 702, Lot 56, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Amendment Relinquished; 1979 Variance Reinstated.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application to relinquish a variance amendment, previously granted by the Board pursuant to Z.R. § 72-21, to reinstate conditions under the original variance and Certificate of Occupancy No. 195655, dated July 28, 1980, which permitted the use of the Premises as a two-family residential dwelling.

The Premises are located on the east side of 44th Street, between 25th Avenue and 28th Avenue, in an R5 zoning district, in Queens. The Premises have approximately 25 feet of frontage along 44th Street, a depth of 100 feet, 2,500 square feet of lot area and are occupied by a three-story residential building.

The Board has exercised jurisdiction over the Premises since June 19, 1979, when, under the subject calendar number, the Board granted a variance (the “1979 Variance”) to permit the construction of a two-story plus basement, two-family dwelling that encroached on the required side yard, contrary to Z.R. § 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. 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”). 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”). 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”).

By application filed on May 5, 2017, under BSA Cal. No. 2017-144-A, the New York City Department of Buildings (“DOB”) sought revocation of the 2003 CO because it does not comply with the 1979 Variance (the “DOB Appeal”). An application for an amendment of the 1979 Variance was filed on March 28, 2018. The two cases were thereafter heard together, but, while the amendment to the 1979 Variance was decided on March 26, 2019, the DOB Appeal remained at the Board pending the applicant’s satisfactory compliance with the conditions of the resolution until decision of the instant application and the DOB Appeal, in which the Board granted DOB’s request to revoke the 2003 CO.

The applicant filed with the Board to amend the 1979 Variance for 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.

On March 26, 2019, the Board granted an amendment to the 1979 Variance (the “Amended Variance”) 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; and, to eliminate the condition that the Certificate of Occupancy indicate the libre, page and date of recording of said covenant on further condition that all work and site conditions conform to drawings filed with the application, dated March 22, 2019 (marked “Received March 27, 2019”)—Six (6) sheets; the applicant submit the drawings for full plan review by the Department of Buildings and not file, or obtain permits to perform construction in conformance with them, pursuant to Directive 14 of 1975; the applicant make substantial progress, as determined by inspections of the premises by the Department of Buildings and the Fire Department, within six months of the conditional approval, by September 26, 2019, or the Board

# MINUTES

will revoke the amendment; a revised certificate of occupancy, indicating the approval and calendar number (“BSA Cal. No. 103-79-BZ”) be obtained within one year; 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.

By letter dated January 29, 2020, the applicant requests that the Amended Variance be relinquished and that the 1979 Variance be reinstated. In particular, the applicant represents that, since the Board’s approval of the Amended Variance, no work has been performed in connection with the application and that the scope of work necessary to comply with the Amended Variance would not be feasible.

Accordingly, it appears from the record that the conditions of the Board’s approval of the Variance Amendment would not be met, and the Board finds it appropriate to grant the applicant’s request to relinquish the Amended Variance.

*Therefore, it is Resolved, that the Board reopens and amends the resolution to relinquish the relief granted on March 26, 2019, and the relief granted by the Board on June 19, 1979 is hereby reinstated.*

Adopted by the Board of Standards and Appeals, February 25, 2020.

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## 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

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

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

Negative:.....0

### THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction of a one-story building used as a bank (Use Group (“UG”) 6) and expired on June 8, 2019.

A public hearing was held on this application on February 25, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Scibetta and Commissioner Sheta performed

inspection of the site and surrounding neighborhood. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the southwest corner of Hylan Boulevard and Seguine Avenue, in an R3X zoning district and in the Special South Richmond Development District, on Staten Island. The site has approximately 127 feet of frontage along Hylan Boulevard, 108 feet of frontage along Seguine Avenue, 13,368 square feet of lot area and is occupied by an existing one-story building used as a bank.

“The Board has exercised jurisdiction over the Premises since January 6, 1956, when, under BSA Cal. No. 368-58-BZ, the Board granted a variance to permit the use of the Premises as a gasoline service station, lubritorium, car wash, and merchandise sales. The Board amended the variance in 1961, 1976, and, on July 23, 1983, under BSA Cal. No. 368-58-BZ, the Board further amended the variance to extend the term and permit the conversion of the retail store to an accessory office.”.

On June 8, 1999, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the construction of a building used as a bank (UG 6), in a then-R3-2 zoning district, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the site be kept graffiti and debris free; the term of the variance be for 20 years, to expire on June 8, 2019; all signage be precisely as depicted on the Board-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, substantial construction be completed in accordance with ZR § 72-23, by June 8, 2003.

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

At hearing, the applicant provided amended plans to show the locations of trees to be planted and added required landscaping notes to such plans.

By letter dated January 12, 2020, the Fire Department states that these Premises are protected by a sprinkler system, which was tested and witnessed by the Fire Department; 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.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved, that the Board of Standards and Appeals does hereby waive its Rules of Practice and Procedures and amends the resolution, dated June 8, 1999, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire*

# MINUTES

on June 8,; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 26, 2019”-Two (2) sheets and “February 25, 2020”-Three (3) sheets; *on further condition*:

THAT landscaping shall be installed in accordance with the BSA-approved plans and maintained in first class condition;

THAT signage shall comply with C1 district regulations;

THAT fencing and asphalt shall be replaced as necessary to be maintained in first rate condition;

THAT the site shall be kept graffiti and debris free at all times;

THAT the term of the variance shall be for ten years, to expire on June 8, 2029;

THAT the conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 160-98-BZ”) 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 14, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2020.

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## 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

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy which expired on December 11, 2019.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2020, and then to decision on that same date. Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood.

The Premises are located on the south side of Linden Boulevard, bounded by Ashford Street and Cleveland Street, in an R5 zoning district, in Brooklyn. The site is comprised of two adjoining tax lots with approximately 200 feet of frontage on Linden Boulevard, 85 feet of frontage on Ashford Street, 105 feet of frontage on Cleveland Street, 19,000 square feet of lot area, and is occupied by two one-story retail stores (Use Group (“UG”) 6)—one building located at the south east corner of Linden Boulevard and Ashford Street (the “Ashford Building”) identified on BSA-approved plans as “BLDG. B” and “BLDG. B1”, and one building located at the southwest corner of Linden Boulevard and Cleveland Street (the “Cleveland Building”) identified on BSA-approved plans as “BLDG A” and “BLDG. A1”—with 19 accessory off-street parking spaces on-site.

The Board has exercised jurisdiction over the Premises site since January 16, 1951, when, under BSA Cal. No. 215-50-BZ, the Board granted a variance to permit the construction of a building in a residence district to be used as a bowling alley, stores, and offices, for a term of ten years, expiring January 16, 1961, on condition that the building in all other respects comply with all laws, rules and regulations applicable thereto and with all other provisions of the zoning resolution; no part of the building be erected within the proposed widening line of Ashford street; before plans are filed with the Department of Housing and Buildings complete working drawings be submitted to the Board for further consideration; such plans be filed within six months from the date of the resolution and after approval, all permits be obtained and all work completed within one year thereafter. On October 14, 1959, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit the erection and maintenance of three retail stores with accessory customer and employee parking, with the building occupying more than the permitted area and without the required setback, for a term of 21 years, expiring October 14, 1980, on condition that the work be done in accordance with drawings filed with the application; all laws, rules and regulations applicable be complied with; all permits, including a certificate of occupancy be obtained and all work completed within one year, by October 14, 1960. On June 28, 1960, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit the façade of Building A1 to be redesigned and provided with a show window on Ashford Street, except that the Ashford Street side of the building be faced with face bricks instead of concrete blocks; a certificate of occupancy be issued upon

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the completion of Building A, and a separate certificate of occupancy be issued upon the completion of Building B1, on condition that other than as amended, the resolution be complied with in all respects. On November 29, 1960, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit Building B2 to be reduced in size to a depth of 80 feet and constructed substantially as shown on revised drawings dated November 7, 1930, 3 sheets, on condition that other than as amended the resolution be complied with in all respects. On April 25, 1961, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit illuminated non-flashing signs on Building A, substantially as shown on revised drawings dated March 20, 1961, one sheet, except that no sign be permitted on the Ashford Street side of the building on condition that other than as amended the resolution be complied with in all respects. On July 18, 1961, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit an illuminated non-flashing sign on the Linden Boulevard front of Building B substantially as shown on revised drawings dated June 14, 1961, one sheet, on condition that other than as amended the resolution be complied with in all respects. On May 27, 1980, under BSA Cal. No. 215-50-BZ, the Board reopened and amended the resolution to grant an extension of term for ten years, expiring October 14, 1990, and required 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 May 27, 1981.

On June 18, 1991, under BSA Cal. No. 288-90-BZ, the Board granted an extension of the term of the variance for the use of retail stores (UG 6) and the enlargement of the Cleveland Building which increases the degree of non-conformance on condition that all work substantially conform to drawings filed with the application; the term be limited to ten years, expiring June 18, 2001; all landscaping be in accordance with BSA-approved plans and be maintained and replaced as necessary; all lighting be directed down and away from adjoining residences; all signs comply with C1 district regulations; the parking area be locked after business hours; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed within four years.

On December 11, 2018, under the subject calendar number, the Board waived its Rules of Practice and Procedures, reinstated and amended the resolution, issued January 16, 1951, under BSA. Cal. No. 215-50-BZ, as amended through June 18, 1991, under BSA Cal. No. 288-90-BZ, to permit a 668 square foot enlargement of the Ashford Building, on condition that the use and operation of

the site conform to drawings filed with the application; the Ashford Building have a maximum floor area of 5,365 square feet; prior to the issuance of the resolution, the corrugated metal on the extension on Ashford Street be removed and the masonry material underneath be painted to match the color of the adjoining brick wall, and, if it is not masonry, the wall be enclosed with an exterior fire-rated finish/material that meets Building Code and is not exterior insulation and finish system, and vents protruding over the public sidewalk be relocated within the property prior to the resolution taking effect; all fencing include privacy stats; the gate along Cleveland Avenue be replaced with a permanent fence so as to prevent access to the property from Cleveland Avenue; the area behind the building be used as parking with access from Linden Boulevard only; one street tree be installed on Cleveland Avenue, opposite from the entrance to the parking lot, to prevent access to the lot from Cleveland Avenue; the curb cut on Ashford Street be removed; all landscaping be in accordance with BSA-approved plans and be maintained and replaced as necessary; all lighting be directed down and away from adjoining residences; all signs comply with the C1 district regulations; the parking area be locked after business hours; the conditions appear on the certificate of occupancy; a certificate of occupancy indicating the approval and calendar number (“BSA Cal. No. 2018-18-BZ”) be obtained within one year, by December 11, 2019; 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, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The time to have obtained a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that they have experienced difficulty in obtaining a certificate of occupancy due to open applications at the Department of Buildings. At hearing, the Board expressed concern that the conditions of prior resolutions had not been complied with and requested the applicant demonstrate compliance. In response, the applicant provided photographs demonstrating restriping of the parking area and improved site conditions, but was unsuccessful in pursuing a street tree planting request with the Department of Parks and Recreation.

By letter dated January 8, 2020, the Fire Department objected to the application due to four open violation orders issued by the Department’s Licensed Public Place of Assembly (“LPPA”) unit and Rangehood Unit (“RHU”) and states that LPPA inspected a store that was illegally converted to a nightclub and two violation orders were issued (VO#E499668: a) remove illegal hardware on the exit doors (slide bolts); b) remove the storage of liquified petroleum gas in the Premises; c) doors not swinging towards the means of egress; d) provide that exits be free from obstruction at all times; and, VO#E499669: failed to

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1 Prior Board history references to “Building A” herein refer to the Ashford Building, and references to “Building B” herein refer to the Cleveland Building.



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obtain a certificate of operation and approved floor plans for the Place of Assembly (estimated number of persons exceeds 200); the Fire Department attempted to conduct a re-inspection of the nightclub but had been unable to gain access and requested the Board instruct the applicant to contact LPPA to schedule a reinspection. In addition, the RHU inspected a rangehood system at an existing restaurant (“Island Pot”) and issued two violations (VO#E536464: failed to provide UL1046 approved MEA/BSA baffle type grease filters; VO#536465: a) failed to legalize existing/alterd rangehood system; b) arrange performance test by licensed Master Suppression Piping Contractor); the Fire Department requested the Board not render a decision on the application until after these violation orders are dismissed or cured.

The applicant provided evidence of a Marshal’s legal possession notice evicting the restaurant and represented that the nightclub use had ceased.

By letter dated February 21, 2020, the Fire Department states that a reinspection was performed on February 20, 2020, by LPPA and the inspector found the nightclub no longer occupies the space and is currently vacant; miscellaneous items have been corrected and the LPPA violations were dismissed; for the additional violation orders issued by RGU, the Department understands that the restaurant space is being renovated and plans will be filed for the fire suppression system, which will take several weeks to complete; RHU has been informed of the work and will continue to monitor the site for compliance with their violation orders; 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.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, issued January 16, 1951, under BSA. Cal. No. 215-50-BZ, as amended through December 11, 2018, under the subject calendar number, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of *on condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-18-BZ”) 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 13, 2021;

THAT street tree(s) shall be planted in accordance with BSA-approved plans, maintained and replaced as necessary, to prevent access to the lot from Cleveland Avenue;

THAT no public parking by trucks, cars, or otherwise, is permitted at the Premises;

THAT the corrugated metal on the extension on Ashford Street shall be maintained removed and the masonry material underneath shall be maintained painted to match the color of the adjoining brick wall, and, if it is not masonry, the wall shall be maintained enclosed with an exterior fire-rated finish/material that complies with the Building Code and is not exterior insulation and finish system;

THAT vents shall not protrude over the public sidewalk;

THAT all fencing shall be maintained with privacy stats;

THAT the gate along Cleveland Avenue shall be maintained with a permanent fence so as to prevent access to the property from Cleveland Avenue;

THAT the area behind the building shall be used as parking with access from Linden Boulevard only;

THAT the curb cut on Ashford Street shall be maintained closed;

THAT all landscaping shall be in accordance with BSA-approved plans and shall be maintained and replaced as necessary;

THAT all lighting shall be directed down and away from adjoining residences;

THAT all signs shall comply with the C1 district regulations;

THAT the parking area shall be locked after business hours;

THAT the above conditions shall appear on the certificate of occupancy

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2020.

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## **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**

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to June 30, 2020, at 10 A.M., for continued hearing.  
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**764-56-BZ**

APPLICANT – Alfonso Duarte, for Barney’s Service Station Inc., owner.

SUBJECT – Application July 2, 2019 – Amendment (§11-412) of a previously approved variance permitting the operation of an automotive service station (UG 16B). The amendment seeks to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office and storage space. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, Block 7451, Lot 32, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to June 30, 2020, at 10 A.M., for postponed hearing.  
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**42-97-BZ**

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

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

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

**COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to May 19, 2020, at 10 A.M., for continued hearing.  
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**APPEALS CALENDAR**

**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 44<sup>th</sup> Street, Block 702, Lot 56, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Application Granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, filed by the Department of Buildings (“DOB”), pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a), to revoke Certificate of Occupancy No. 401501264, dated August 25, 2003, (the “CO”) issued for the Premises, and seeks to reinstate Certificate of Occupancy No. 195655, dated July 28, 1980.

The CO indicates that the Premises are occupied by a two-story and basement building classified as building occupancy group J-2 under the 1968 Building Code with Use Group 2 occupancy permitted on the basement through second floors, one dwelling unit per floor.

DOB submits that the CO was improperly issued because it improperly permits a three-family use of the property in an R5 residential zoning district in violation of a variance granted by the Board pursuant to Z.R. § 72-21, under BSA Cal. No. 103-79-BZ, which permitted the erection of the building as a two-family residential dwelling that encroaches into the required side yard.

Specifically, DOB states that the use of the building as a three-family residential dwelling requires and, more importantly, lacks a sprinkler system and constitutes a defect in the issuance of the CO, as the job application never identified a sprinkler and there was no sprinkler installed.

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 January 23, 2018, April 17, 2018, August 7, 2018, October 23, 2018, February 5, 2019, March 26, 2019, October 22, 2019, and February 25, 2020, and then to decision on that date. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. The Board received three form letters and heard testimony from an adjacent neighbor in support of the application by DOB to revoke the CO.

The Premises are located on the east side of 44<sup>th</sup> Street, between 25<sup>th</sup> Avenue and 28<sup>th</sup> Avenue, in an R5 zoning district, in Queens. The Premises have approximately 25 feet of frontage along 44<sup>th</sup> Street, a depth of 100 feet, 2,500 square feet of lot area, and are occupied by a three-story residential building.

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On June 19, 1979, under BSA Cal. No. 103-79-BZ, the Board granted a variance (the “1979 Variance”), pursuant to Z.R. § 72-21, to permit the erection of a two-story and basement two-family dwelling that encroaches on the required side yard 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 with the Department of Buildings prior to the issuance of a building permit; the Certificate of Occupancy indicate the libre, page, and date of recording of said covenant; all laws, rules, and regulations applicable be complied with; and substantial construction be completed within one year, by June 19, 1980.

On July 28, 1980, DOB issued Certificate of Occupancy No. 195655, which reflected a two-family residential dwelling on the first and second floors of the Premises and the use of the basement floor as recreation, laundry, storage, boiler room, and one-car garage.

In 2002, a registered architect, filed Alteration Type 1 Application No. 401501264 (the “Alt. 1 Application”), to convert the two-family dwelling into a three-family dwelling, under DOB’s Professional Certification procedure, whereby it was affirmed to DOB “that [the architect] exercised a professional standard of care in certifying that the filed application is complete and in accordance with applicable laws as of this date. I am aware the Commissioner will rely upon the truth and accuracy of this statement.” Based upon the architect’s affirmation that the application was in compliance with all applicable laws and rules, DOB did not conduct a full plan examination of the application prior to its approval on September 6, 2002, and the CO was issued on August 25, 2003, listing the occupancy as three families.

On March 26, 2019, under BSA Cal. No. 103-79-BZ, the Board granted an amendment of the variance (the “Amended Variance”) to permit three-family occupancy of the Premises, 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, and to eliminate the condition that the Certificate of Occupancy indicate the libre, page and date of recording of said covenant. In granting this amendment application, the Board imposed further conditions that all work and site conditions conform to drawings filed with the application; the applicant submit the drawings for full plan review by the Department of Buildings and not file, or obtain permits to perform construction in conformance with them, pursuant to Directive 14 of 1975; the applicant make substantial progress, as determined by inspections of the Premises by the Department of Buildings and the Fire Department, within six months of the conditional approval, by September 26, 2019, or the Board will revoke the amendment; a revised certificate of occupancy, indicating the approval and calendar number be obtained within one year; 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, 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.

DOB states that the DOB Queens Borough Office performed an audit, in December 2014, for the Premises after receiving a complaint from the Buildings Special Investigations Unit. On December 19, 2014, DOB issued a Notice of Objections for the Alt. 1 Application pursuant to Z.R. § 11-62, Failure to Comply with Special Permits, Variances, Authorizations or Certifications. Specifically, the Notice of Objections stated that the “application increased the number of dwelling units from 2 to 3. 103-79-BZ stipulates that the number of dwelling units in this premises shall be limited to two (2). This application failed to comply with the conditions stipulated in the variance . . . and may constitute the basis for revocation of the C of O.” An order from the DOB Queens Borough Commissioner was also sent to the owner of the Premises on December 26, 2014, explaining that the owner must file an Alteration Type 1 application or file an application with the Board of Standards and Appeals to modify the resolution within 30 days to remove the conditions listed in the Notice of Objections. The owner did not respond. On April 27, 2015, the DOB General Counsel's office sent another letter of Failure to Comply with the Order of the Commissioner, reiterating the Order sent in 2014, but received no response.

Over the course of hearings, DOB and the owner worked to coordinate changes necessary, through filings and job applications with DOB, to legalize the use of the Premises as a three-family dwelling and maintained the request to revoke the CO and requested that the Board stay its determination until plans for the Alt. 1 Application are amended and a sprinkler is added in the stair enclosure, as was noted in the December 19, 2014, Notice of Objections. The DOB further instructed the owner to complete the work under the Alt 1 Application, or file a separate Alteration Type 2 application, for the installation of sprinklers, smoke detectors, and carbon monoxide detectors.

By correspondence dated February 24, 2020, the owner submits that DOB permits had not yet been issued and no progress has been made toward the completion of work to legalize a three-family residential occupancy use. The owner represents that the owner is unable to pursue the work necessary to legalize the three-family occupancy and intends to restore the prior two-family occupancy in accordance with the 1979 Variance. The owner requests that the Amended Variance be relinquished and that the variance revert to the 1979 Variance, thereby reinstating all original conditions, including that the building only be used as a two-family dwelling.

By letter dated January 25, 2019, the Fire Department states its support of the instant application to revoke the CO.

As discussed at hearing, the 1979 Variance permitted, and restricted, the occupancy to a two-family residential dwelling. The Amended Variance permitted legalization of the use of the Premises as a three-family residential

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dwelling on condition that the applicant make substantial progress, as determined by inspections of the Premises by the Department of Buildings and the Fire Department, within six months of the conditional approval, by September 26, 2019. The owner has acknowledged the scope of work required to legalize the use of the Premises for three-family residential occupancy but represents that completing the required work is not feasible. The Board notes that no progress toward the completion of work in accordance with the Amended Variance had occurred, as noted by the owner, DOB, and the Fire Department.

Accordingly, based on the foregoing, the Board finds that Certificate of Occupancy No. 401501264, dated August 25, 2003, was unlawfully issued.

*Therefore, it is Resolved*, that the application by the Department of Buildings seeking revocation of a certificate of occupancy is *granted* and Certificate of Occupancy No. 40150264 shall be and hereby is *revoked*.

Adopted by the Board of Standards and Appeals, February 25, 2020.

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**2016-4302-A thru 2016-4326-A**

**2016-4355-A thru 2016-4462-A**

**2016-4302-A thru 2016-4326-A**

**2017-107-A thru 2017-129-A**

**2019-51-A thru 2019-57-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mount Builders, LLC, owners.

SUBJECT – Applications November 10, 2016, April 13, 2017, March 19, 2019 – Proposed constructions of single family residences not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

PREMISES AFFECTED – 92–120 Cupidity Drive, 201–225 Avidita Place; 301–465 Fourberie Lane, 201–275 Avidita Place, 76–120 Cupidity Drive; 301–477 Fourberie Lane, 201–275 Avidita Place, 76–120 Cupidity Drive; and 301–477 Fourberie Lane, 201–275 Avidita Place, 76–120 Cupidity Drive; Block 3019, Lot 120 (Tentative Lots 99–119, 401–411, 203–247, 252–269, 412–460, and 307–325), Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**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** –

The decisions of the Department of Buildings (“DOB”), dated October 11, 2016, December 6, 2016, April 12, 2017, and March 4, 2019, acting on New Building Application Nos. 520266337, 520266346, 520266355, 520266364, 520266373, 520266382, 520266391, 520266408, 520266417, 520266426, 520266435, 520266444, 520266453, 520266462, 520267069, 520267078, 520267087, 520267096, 520267103, 520267112, 520267121, 520267130, 520267149,

520267158, 520267167, 520266471, 520266480,  
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520267951, 520267942, 520267933, 520267924,  
520267915, 520267906, 520267899, 520267880,  
520267871, 520267862, 520267853, 520267844,  
520267835, 520267826, 520267817, 520267808,  
520267791, 520267773, 520267764, 520267755, and  
520267746, read in pertinent part: “The street giving access to proposed building is not duly placed on the official map of the City of New York therefore: A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law. B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code.”

This is an application requesting waiver of the requirement pursuant to General City Law § 36(2) that the subject development of 163 new residential buildings be accessed from a legally mapped street and to instead allow the 163 new buildings to be accessed from a network of 34-foot-wide unmapped private streets.

As discussed herein, the Board has considered all of the evidence in the record and testimony presented but ultimately finds that approving an application for the proposed development would not be appropriate or consistent with the intent of the General City Law and that the applicant has not substantiated a basis to warrant the exercise of discretion.

## I.

A public hearing was held on this application on September 10, 2019, after due notice by publication in *The*

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*City Record*, with continued hearings on November 19, 2019, and February 25, 2020, and then to decision on that date.

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

Community Board 1, Staten Island, recommends disapproval of this application, citing concerns that the proposed creation of a homeowners association to manage the development implicates many foreseeable issues (including failure to collect adequate maintenance funds, failure to afford necessary infrastructure maintenance and repairs, failure to enforce parking regulations for safe and proper access for service delivery and emergency vehicles, and failure to provide adequate trash and snow removal); that the proposed private streets would not be built to the same Department of Transportation standards as roadways placed on the City Map; and that the size of the proposed development, with 1691 dwelling units, would alter and negatively affect the surrounding area because of concerns with traffic, storm-water runoff, sanitary sewers, and school seats.

The Borough President of Staten Island recommends disapproval of this application, citing concerns that the proposed development would adversely affect the quality of life for adjoining homeowners and the potential for devastating consequences with respect to public health, safety, and the general welfare.

The Board also received testimony opposing this application from a New York State senator, New York State Assembly member, and a New York City Council member, citing concerns over potential traffic issues caused by the proposed development, adverse effects to the public health, safety, and general welfare, and failure of the Applicant to demonstrate unnecessary hardship, respectively.

The Board received one letter supporting this application and approximately 59 letters from individuals and 4 letters from community advocacy groups opposing this application.

## II.

The Premises are located on the west side of Fingerboard Road, north of Narrows Road North, in an R3-2 zoning district, on Staten Island. They have approximately 565 feet of frontage along Fingerboard Road, 85 feet of frontage along Merle Place, 24 feet of frontage along Hope Avenue, 356 feet of frontage along Narrows Road North, 683,381 square feet of lot area, and are vacant.

## III.

The General City Law provides that municipalities “may establish an official map of the city” that is “deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon” in order “to conserve and

promote the public health, safety and general welfare.” General City Law § 26. Under Section 198 of the New York City Charter, the City Map serves this purpose within the City of New York.

The General City Law also establishes a planning board with the power to review and approve, among other things, plats, subdivisions, and new streets as part of the official city map. General City Law §§ 32–34. Further, the New York City Charter prohibits the filing and recording of subdivisions or platting of land into streets, avenues, or public places and blocks unless and until the map showing such has been reviewed and approved under the Uniform Land Use Review Procedure (“ULURP”) and the City Planning Commission has filed its decision with the City Council and borough president for approval. New York City Charter §§ 197-c, 197-d, and 202.

By law, “streets” “shall be located and laid out on the city map,” and “[t]he width and grades of all streets so located and laid out shall be indicated thereon.” Admin. Code § 25-102. The Administrative Code defines a street as “[a]ny public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets.” Admin. Code § 1-112.

Consistent with this framework, Section 36(2) of the General City Law (emphasis added) provides, in pertinent part:

No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway, and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway . . . . *Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations.* The board may in passing on such appeal make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future

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1 The community board’s reference to 169 dwelling units included review of 6 dwelling units that are proposed to be constructed as of right and are not included in this application nor subject to the Board’s review.

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street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

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

The Board had taken an expansive view of this authority, making exceptions for developments of all sizes, which permitted the buildings on them to be accessed by unmapped streets, while imposing few if any safeguards as conditions of the Board’s grants. In the cases where such safeguards were imposed, they relied on the representation of the developers that a Homeowners Association Agreement (“HOA”) would oblige homeowners to maintain the private streets and enforce no-parking regulations on narrow unmapped private streets to allow emergency vehicle access.

In recent years, however, the Board conducted site visits to developments constructed pursuant to waivers of General City Law § 36(2) and heard considerable testimony that these safeguards have proven inadequate. The Office of the Staten Island Borough President submitted an extensive amount of testimony highlighting the issues concomitant with these developments, as a myriad of such exist within its borough. Over the last several years, the Board has learned that problems arise because builders frequently abscond after sellout of the development to new homeowners. Homeowners are not properly notified of their obligations under the HOA or aware that their properties are subject to the Board’s restrictions. Homeowners associations have gone unfounded and unfunded. Ownership of the private roadways has gone unrecorded and chain of title has been lost. Access easements have never been granted. Parking restrictions have gone unenforced. Snow has gone unplowed. Trash has gone uncollected. Fire hydrants have gone uninspected. Damaged roadways have gone unrepaired, sidewalks unbuilt, and street lighting never installed. Emergency vehicles have been delayed by inconsistent house numbering, non-continuous and, sometimes, unidentified streets, and double- or triple-parking blocking access. And homeowners and neighborhoods have been left with infrastructure in a state of disrepair, and unplanned, unmapped roads that do not relate to or tie in to existing roadway networks.

The Board has thus revisited its approach towards and analyses of requests for such exceptions to the General City Law, recognizing and refusing to duplicate what is now seen as a previous error, with an eye toward limiting the granting of such “reasonable exceptions” only in rare circumstances. The Board’s authority to modify its approach and, hence, no longer adhere to precedent is permitted where its reasons for doing so are clearly stated. *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.”)

Consequently, the Board has over the last several years required applicants to affirmatively demonstrate that it can meet the findings set forth in General City Law § 36(2): that both enforcing the mapped-street access requirement “would entail practical difficulty or unnecessary hardship” and that “the circumstances of the case do not require the structure to be related to existing or proposed streets or highways.” General City Law § 36(2).

Having witnessed the failure of safeguards at other sites, the Board also now takes a critical eye when exercising its discretion and when assessing the credibility of applicants’ assurances that certain safeguards and conditions could—and would—be implemented. These assurances often turn on promises that large numbers of future unidentified and unknown third parties not currently appearing before the Board would coordinate amongst themselves in the applicant’s absence and would take certain steps to maintain the unmapped streets. However, these same sorts of unfulfilled promises have resulted in the current state of disrepair and mismanagement of unmapped streets, and the Board does not generally find them sufficient—especially where entire unplanned neighborhoods are proposed, as in this case.

#### IV.

The applicant proposes to develop the Premises with 169 new buildings with 473 accessory parking spaces on a single zoning lot, and the applicant represents that the proposed development would be in conformance with applicable zoning regulations.

The Premises have approximately 565 feet of frontage along Fingerboard Road, 85 feet of frontage along Merle Place, 24 feet of frontage along Hope Avenue, 356 feet of frontage along Narrows Road North—all of which are laid out on the City Map.

However, 163 of the proposed buildings would be accessed by Cupidity Drive, Avidita Place, and Fourberie Lane—none of which are laid out on the City Map. Instead, the applicant proposes to pave these unmapped streets to a width of 34 feet.

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

The Board has considered the applicant’s request but finds it inappropriate to grant because the record does not reflect the presence of the requisite “practical difficulties or unnecessary hardship,” because the record does not reflect the requisite “circumstances . . . not requir[ing] the structure[s] to be related to existing or proposed streets or highways,” and because the applicant has not substantiated a basis to warrant exercise of discretion, in particular given the absence of adequate assurances that the development of the proposed buildings on the proposed unmapped streets would not succumb to the deficiencies described above.

The Board finds it improper to approve, under a

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waiver of General City Law § 36(2), in essence, a subdivision, which results in the creation of blocks and lots. The scale of the proposed development triggers a myriad of issues and considerations that are appropriately reviewed by a planning board, not the Board of Standards and Appeals. Unlike a planning board, the Board is not involved in planning the layout of proposed streets to ensure that they comply with comprehensive planning principles and that they will effectively link to existing or future planned street systems, both public and private. Nor does the Board have the jurisdiction to consider a mapping action—requiring full participation of sister agencies including the Department of Environmental Protection, Department of Buildings, Department of Transportation, Fire Department—to ensure the adequate provision of public services for the development such as emergency services, public utilities, and school seats. The City Charter confers such power, decision-making, and expertise to a planning board and not the Board of Standards and Appeals.

The Board cannot satisfy these considerations. The Board observes that the proposed development proposes residential density that may require more public school seats than are potentially available, would create poor urban-planning layouts—with the rear of homes backing to the existing and mapped Fingerboard Road—would, if granted the requested waivers under General City Law § 36(2), lack adequate review by other agencies to ensure provision for its infrastructure and shared open space.

First, the Board finds that in the subject case, enforcing the General City Law’s requirement that “any building” issued a certificate of occupancy have “access” to “a street or highway . . . duly placed on the official map or plan” would not “entail practical difficulty or unnecessary hardship.” General City Law § 36(2). The applicant asserts: “The requirement . . . results in practical difficulty in the development of the subject lots that each meet all pertinent code requirements for area and lot width. The subject site has limited frontage at its perimeter on mapped streets (Fingerboard Road, Narrows Road East, Merle Place), and alternate access to the interior of the site via a mapped street is impossible, resulting in practical difficulty in conforming and compliant development of the subject site.”

The applicant alleges a practical difficulty in complying with General City Law § 36(2) because access to the interior of the proposed development from a mapped street would be impossible. The applicant states that the proposed private roads would be developed and paved in accordance with Fire Code and zoning standards and equivalent in dimension to nearby private roads.

Additionally, the applicant states that a development complying with both General City Law § 36(2) and with applicable bulk regulations, which would permit as-of-right development of multiple dwellings, would be out of character with the surrounding area; would result in more, but smaller, dwelling units; require six, instead of two, curb cuts; and would represent a loss of return to the developer.

However, the record reflects that the Premises are situated such that they could be developed as of right with

four multiple dwellings. Notably, one of these multiple dwellings is in the same location and position as the multiple dwelling on the proposed site plan, undercutting the applicant’s hardship claim that developing the others would prove impractical.

Further, the applicant failed to explore whether access to each of the buildings on the site, whatever their number and configuration, could be achieved from existing mapped streets, or whether access to such buildings could be accomplished by obtaining street mapping-approval from the Department of City Planning and City Planning Commission.

The applicant’s decision to pursue an exception with this application does not reflect the presence of “practical difficulty or unnecessary hardship.” The applicant asserts that, unlike a waiver of General City Law § 36(2), mapping-approval is a legislative act that is both onerous and political, and represents that the Department of City Planning rarely undertakes mapping-approvals for private development. The Board, however, notes that many mapping-approvals have taken place in recent years for sites destined for private development as indicated on the Department of City Planning’s website (*see* City Planning Reports C 150359 MMR (September 6, 2017), C 120323 MMX (February 18, 2015), C 130384 MMQ (September 29, 2014), M 090107 (C) MMK (February 22, 2017); *see also* C 150359 MMR (September 6, 2017), C 130229 MMR (September 11, 2013), and C 810161 MMR (December 8, 1982)). Rather, the applicant is seeking to develop the highest and best use of its property without restriction. This the Board cannot abide.

Second, “the circumstances of the case do . . . require the structure[s] to be related to existing or proposed streets or highways.” General City Law § 36(2). The applicant asserts: “Development of the lot does not require any of the proposed structures to be related to any existing mapped streets or highways since the proposed roads Cupidity Drive, Avidita Place and Fourberie Lane will be paved and improved pursuant to all pertinent code requirements, providing safe access to each of the proposed single-family homes. The proposed private roads will be equivalent to existing private roads immediately west of the subject site (North Drive, Wagner Street, Schubert Street, Strauss Street and Mendelsohn Street) that currently provide access to more residential buildings (166) and dwelling units (180) than are proposed as part of the subject development (163 and 163).”

However, the record reflects that this would not be the case. For instance, the applicant has received no determination from the Department of Transportation confirming that the proposed unmapped streets would be equivalent to mapped streets in design, construction, or maintenance. Instead, the Department of Transportation, by letter dated April 4, 2017, states that the applicant should “map and build the streets depicted in the proposed site plan according to City standards and transfer title of those streets to the City.” The applicant merely concludes that, in providing access to the proposed development through the

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proposed unmapped streets, the development becomes related to existing mapped streets and highways, or that this requirement is somehow satisfied.

Furthermore, it is the Board’s understanding, based on its consideration of legislative materials preceding the creation of and amendments to General City Law § 36, that the phrase in General City Law § 36(2) “*and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways*” is meant to refer to buildings that are incidental to a principle use or building that does need adequate access to a mapped street, such as a garage or storage building, pool house or cabana, artist studio, or farm structure (*see* Edward M. Bassett, *Planning of Unbuilt Areas in the New York Region*, REGIONAL PLAN OF NEW YORK AND ITS ENVIRONS, 1925, at 9, fn. 1, “This provision is for occasional structures like farm buildings certain kinds of industrial buildings, public utility structures, etc., that may not have any necessary relation to streets and highways.”).

Nor has the applicant provided any determination from the Department of Environmental Protection that the proposed in-ground infrastructure would meet standards applicable to City-owned infrastructure. Instead, the Department of Environmental Protection, by letters dated September 25, 2019, and November 22, 2019, states that the applicant has not submitted sufficient information to make a determination and that the property owner would be responsible for “maintain[ing] all the connections and the internal sanitary and storm drains; and internal water mains. The New York City [sic] will not maintain the connections; and the internal sanitary drain and storm drain and internal water main.”

The scale of the proposed development also presents safety concerns in the event of a fire or other emergency. The Fire Department, by letters dated September 10, 2019, and November 15, 2019, states that it objects to this application because the proposed development “places undue hardship on the department in the event of emergency conditions.” The Fire Department also notes the absence of sprinklers for certain proposed buildings, contrary to minimum fire-safety standards, and notes that it concurs with the Department of Transportation “that the streets be mapped and the site plans conform to DOT standards for new roads.”

Lastly, the applicant has not substantiated a basis to warrant exercise of discretion, especially given the absence of adequate assurances. The applicant proposes to address the concerns posed and created by the proposed development with a restrictive declaration, giving notice of the proposed HOA and permitting the Fire Department to issue criminal summonses to the homeowners association for failure to abide by such, and states that, with 163 members, *this* homeowners association—which would provide for maintenance of common areas including streets, water and sewer services—would remain viable.

The Board disagrees and finds the contrary would likely result, as it so often has in the past. A homeowners association, comprised of unidentified and unknown future

third parties, would pose significant hurdles in the identification of members, management, and funding to provide for sufficient maintenance of the proposed development.

Further, the Board cannot, nor is it aware of any New York City enforcement agency with such power to, enforce parking restrictions on private streets, the violation of which impedes the effective delivery of emergency services.

Based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the record does not demonstrate the presence of “practical difficulties or unnecessary hardship” or “circumstances . . . not requir[ing] the structure[s] to be related to existing or proposed streets or highways,” and 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 *uphold* the decisions of the Department of Buildings dated October 11, 2016, December 6, 2016, April 12, 2017, and March 4, 2019, acting on New Building Application Nos. 520266337, 520266346, 520266355, 520266364, 520266373, 520266382, 520266391, 520266408, 520266417, 520266426, 520266435, 520266444, 520266453, 520266462, 520267069, 520267078, 520267087, 520267096, 520267103, 520267112, 520267121, 520267130, 520267149, 520267158, 520267167, 520266471, 520266480, 520266499, 520266505, 520266514, 520266523, 520266532, 520266541, 520266550, 520266569, 520266578, 520266587, 520266496, 520266603, 520266612, 520266621, 520266630, 520266649, 520266658, 520266667, 520266676, 520266685, 520266694, 520266701, 520266710, 520266729, 520266738, 520266747, 520266756, 520266765, 520266774, 520266783, 520266792, 520266809, 520266818, 520266827, 520266836, 520266845, 520266854, 520266863, 520266872, 520266481, 520266890, 520266907, 520266916, 520266925, 520266934, 520266943, 520266952, 520266961, 520266970, 520266989, 520266998, 520267005, 520267014, 520267023, 520267032, 520267041, 520267050, 520267176, 520267185, 520267194, 520267201, 520267210, 520267229, 520267238, 520267247, 520267256, 520267265, 520267274, 520267283, 520267292, 520267309, 520267318, 520267327, 520267336, 520267345, 520267354, 520267363, 520267372, 520267381, 520267390, 520267407, 520267416, 520267425, 520267434, 520267443, 520267452, 520267461, 520267470, 520267489, 520267498, 520267504, 520267513, 520267522, 520267531, 520267540, 520267559, 520267568, 520267577, 520267586, 520267595, 520267602, 520267611, 520267620, 520267639, 520267648, 520267657, 520267979, 520267960, 520267951, 520267942, 520267933, 520267924, 520267915, 520267906, 520267899, 520267880, 520267871, 520267862, 520267853, 520267844, 520267835, 520267826, 520267817, 520267808, 520267791, 520267773, 520267764,



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520267755, and 520267746, under the powers vested in the Board by Section 36 of the General City Law, and this application shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, February 25, 2020.

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## 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 21, 2020, at 10 A.M., for continued hearing.

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## 2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 2017-56-BZ

#### CEQR #17-BSA-099R

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** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated September 5, 2017, acting on New Building Application No. 520288206, reads in pertinent part: “ZR 22-11: Proposed ... is contrary to section 22-11 of the NYC Zoning Resolution. ZR 23-00, ZR 25-00: There are no bulk or parking regulations for a multi-family building.”

This is an application for a variance under Z.R. § 72-21 to permit, on a site located within an R1-2 zoning district, the construction of a three-story building with three dwelling units with a 1,890 square foot floor plate and six accessory off-street parking spaces that would not comply with zoning regulations for use (Z.R. § 22-11), height (Z.R. § 23-00), floor area (Z.R. § 23-00), and parking (Z.R. § 25-00).

A public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, with continued hearings on January 8, 2019, June 25, 2019, November 19, 2019, and February 25, 2020, and then to decision on February 25, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 2, Staten Island, recommends approval of the application.

The Board received over 30 form letters from residents, a letter from the Staten Island Borough President, and a letter from a community member in opposition to this application and citing concerns about increased traffic and congestion along Richmond Road, change to the neighborhood characteristics, and the potential harm this development could have on the structural integrity of adjacent properties.

The Premises are located on the north side of Richmond Road, between Vista Avenue and Delaware Street, in an R1-2 zoning district, on Staten Island. With approximately 75 feet of frontage along Richmond Road, 130 feet of depth, and 9,742 square feet of lot area, the Premises are currently vacant.

The applicant originally proposed to develop the Premises into a three-story residential building with six dwelling units, 9,742 square feet of floor area (0.50 FAR), and 10 accessory off-street parking spaces (the “Proposed Building”). The Proposed Building would require bulk and use waivers to vary the height of the building and permit multiple residence use in a zoning district that only allows single-family detached residences. The applicant now proposes to construct a residential building containing three dwelling units, six accessory off-street parking spaces, and a 1,890 square foot floor plate, a proposal reduced in response to Board questions and community concerns.

The Proposed Building could not be constructed as-of-right because R1-2 zoning districts only allow single-family detached residences, as required by Z.R. § 22-11. Accordingly, the applicant requests the relief set forth herein.

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Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, elevation changes that are more excessive and steeper than adjoining properties—that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

More specifically, the Premises contain steeply sloped topography. Accordingly, the applicant provided a uniqueness study demonstrating that the conditions at the Premises necessitate the careful treatment and excavation of the soil to safely construct the proposed development at the proposed location. These necessary extra measures, such as the building of a retaining wall for foundation support and the design and maintenance of an excavation support system, increase the construction-cost estimates at the Premises relative to the surrounding properties in developing a detached, three-story, single-family residence as of right. Therefore, development at the Premises is curtailed by these unique physical conditions that create practical difficulties or unnecessary hardship in enlarging the Building in strict conformance with the Zoning Resolution.

Accordingly, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

The applicant asserts that there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return. In particular, the applicant presented a financial feasibility study which examined the economic feasibility of developing one detached, three-story, single-family residence at the site. These estimates show that this as-of-right project would result in a loss on investment for the applicant after the cost of construction. The applicant concluded that only the Proposed Building results in a modest positive rate of return, making it economically viable. Based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance with applicable zoning requirements will provide a reasonable return.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding that it is a predominantly mixed use neighborhood including an existing commercial store with residences above directly adjacent to the site, other multi and single family residences, and existing commercial uses including stores, offices, community facilities, and doctors' offices.

At hearings, the Board and various community members raised concerns about the size of the proposed

project which would lead to increased traffic, changed neighborhood characteristics, and potential sinking of the foundation at the subject site and adjoining properties. The Board directed the applicant to provide additional information about the proposed excavation support design and implementation plan to prevent harm to the adjoining property as a result of construction and reduce the proposed building to better adhere to existing neighborhood characteristics.

In response to these concerns, the applicant amended the proposal to a three-story, four-unit residence with six parking spaces 1,890 square foot floor plate and then, again, to three units. The applicant notes that it will install an excavation support system before commencing excavation and foundation construction.

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

The applicant notes that the above unique physical conditions, including abnormally steep elevation and difficult subsoil conditions, present practical difficulties or unnecessary hardship. The hardship herein was not created by the owner or a predecessor in title but is rather a function of the site's geological structure.

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

The applicant submits, in multiple financial feasibility studies, economic analyses, and as-of-right plans, that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. At hearing, the Board questioned how six dwelling units and ten off-street parking spaces at the Premises would blend with the current neighborhood characteristics and whether such a building is necessary to recoup the construction costs in the financial feasibility studies and economic analysis the applicant presented. In turn, the applicant revised the proposal to reflect a building with four dwelling units and submitted further financial feasibility studies and economic analyses to support its revised plan. The Board, again, questioned the proposed construction costs which included a set excavation support plan which inflated the costs. The applicant then revised its proposed plan to reflect three dwelling units and six off-street parking spaces.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The Board has conducted an environmental review of the proposed action, which is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA099R (December 28, 2017).

The EAS documents that the project as proposed

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would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; 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.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. § 72-21 to *permit*—on a site located within an R1-2 zoning district—the development of a three unit, six parking space residence with 1,890 square foot floor plate and three stories over a parking level; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received February 5, 2020”— Seven (7) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum floor area ratio of 0.50 (4,857 square feet of floor area), a maximum front wall height of 45’-0”, six off-street parking spaces and 13’-10” set back, as illustrated on the Board-approved drawings;

THAT the applicant shall install an excavation support system prior to starting excavation and foundation construction; the applicant design team shall be solely responsible for selecting the most suitable design criteria and construction means and methods to ensure that excavation and foundation construction are done in a manner to prevent any negative impacts resulting from excavation and foundation construction from being imposed on the stability of any surrounding properties; these negative impacts include, but are not limited to, settlement, tilting or leaning, undermining, and cracking of adjacent properties; if DOB determines that such damage is the result of inadequate or improper design or construction means and methods, this variance shall be void and no further work relying on such variance shall be permitted to continue;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-56-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 February 24, 2025;

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

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, February 25, 2020.

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## 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 March 24, 2020, at 10 A.M., for adjourned hearing.

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## 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 70<sup>th</sup> Street, Block 1385, Lot 1, 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 March 3, 2020, at 10 A.M., for decision, hearing closed.

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## 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-

# MINUTES

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 31<sup>st</sup> Avenue, Block 728, Lot 1 & 5, Borough of Queens.

## COMMUNITY BOARD #1Q

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 3, 2020, at 10 A.M., for decision, hearing closed.

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## 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 39<sup>th</sup> Street, Block 894, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #6M

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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## 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 April 21, 2020, at 10 A.M., for continued hearing.

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## 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 May 12, 2020, at 10 A.M., for continued hearing.

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## 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 24<sup>th</sup> Street, Block 7659, Lot 61, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 17, 2020, at 10 A.M., for continued hearing.

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## 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

## COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M., for continued hearing.

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## 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

## COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to April 7, 2020, at 10 A.M., for continued hearing.

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# MINUTES

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**REGULAR MEETING  
TUESDAY AFTERNOON, FEBRUARY 25, 2020  
1:00 P.M.**

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

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**ZONING CALENDAR**

**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 26<sup>th</sup> Street, Block 775,  
 Lot 64, Borough of Manhattan.

**COMMUNITY BOARD #4M**

**ACTION OF THE BOARD** – Laid over to March 17,  
 2020, at 10 A.M., for continued hearing.

-----

**2019-76-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Danny  
 Mita, owner.

SUBJECT – Application April 19, 2019 – 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.

PREMISES AFFECTED – 1973 East 16<sup>th</sup> Street, Block  
 7295, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to April 21,  
 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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

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Volume 105, No. 10

March 13, 2020

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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

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# DOCKETS

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New Case Filed Up to March 3, 2020

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# CALENDAR

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## REGULAR MEETING MARCH 24, 2020, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 24, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### SPECIAL ORDERED CALENDAR

#### 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**

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#### 825-86-BZ

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

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

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

**COMMUNITY BOARD # 11BX**

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#### 27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner; Brooklyn Banya c/o Alona Kruglak, lessee.

SUBJECT – Application December 27, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Banya*) which expired on October 16, 2016; Amendment Waiver of the Rules. C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 602-04 Coney Island Avenue, Block 5361, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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#### 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 86<sup>th</sup> Street, Block 1531, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### APPEALS CALENDAR

#### 2019-68-A

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

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

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

**COMMUNITY BOARD #3SI**

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#### 2019-207-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application August 27, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

**COMMUNITY BOARD # 2Q**

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# CALENDAR

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**REGULAR MEETING  
MARCH 24, 2020, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 24, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**ZONING CALENDAR**

**2019-171-BZ**

APPLICANT – Eric Palatnik, P.C., for 1610 Eastchester Road LLC, owner.

SUBJECT – Application June 11, 2019 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R6 and M1-1 zoning districts.

PREMISES AFFECTED – 1610 Eastchester Road aka 1490 Williamsbridge Road, Block 4081, Lot 4, Borough of Bronx.

**COMMUNITY BOARD #10BX**  
-----

**2019-174-BZ**

APPLICANT – Victor K. Han, RA, AIA, for Sung Woo Han, owner; Renzo Gracie Bayside LLC, lessee.

SUBJECT – Application June 14, 2019 – 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.

PREMISES AFFECTED – 45-58 Bell Boulevard, Block 7315, Lot 30, Borough of Queens.

**COMMUNITY BOARD #11Q**  
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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 3, 2020  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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** – Application withdrawn.

**THE VOTE TO WITHDRAW** –

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

**183-09-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 1400 Retail Owner LLC, owner; TSI West 115<sup>th</sup> 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 BOARD** – Application granted.

**THE VOTE** –

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

**THE RESOLUTION** –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a

special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on November 1, 2018, and an amendment to permit a change in the hours of operation.

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 June 25, 2019, and March 3, 2020, and then to decision on that same date. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood.

The Premises are bounded by Fifth Avenue to the east, West 116th Street to the north, West 115th Street to the south, in a C4-5X zoning district, in Manhattan. The site has approximately 202 feet of frontage along Fifth Avenue, 205 feet of frontage along West 116th Street, 358 feet of frontage along West 115th Street, 56,680 square feet of lot area and is occupied by an existing eight-story, plus cellar, mixed-use residential and commercial building.

The Board has exercised jurisdiction over the Premises since October 20, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a physical culture establishment (“PCE”) on a portion of the first floor and cellar level of the Premises on condition that all work substantially conform to drawings filed with the application; the term of this grant shall expire on November 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 cellar and first floor be finished with 3/8-inch rubber flooring; the aerobics studio and all free weights be located in the cellar level; limiters be installed on the stereo systems in the aerobics studio and club; speakers for the PCE not be mounted on the ceiling; the above 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; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. Board’s Rule § 1-07.3(b)(2) requires a showing by the applicant that the use has been continuous from the expiration of term through the filing of the application and, absent a waiver of the Board’s Rules, substantial prejudice would result. In response, the applicant

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# MINUTES

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provided invoices to continuously cover the period of November 2018 through January 2019 and represents that the PCE would incur substantial costs and suffer prejudice should the PCE cease operations at the subject site.

The applicant represents that the PCE continues to operate as “New York Sports Club,” continues to occupy 13,116 square feet in the subject building on the cellar level (9,230 square feet of floor space) and first floor (3,886 square feet of floor area), and the PCE no longer offers massage therapy services. The applicant seeks an amendment to reflect a change in the hours of operation, which are now 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, 7:00 a.m. to 7:00 p.m.

By letter dated April 5, 2019, the Fire Department states that a review of their records shows that the space has no fire alarm installed; a sprinkler fire alarm system was installed and tested satisfactorily by the Fire Department; the applicant is directed to file an Alteration Type II application for the fire alarm system covering the cellar and first floor of the PCE. In addition, an operating permit was never obtained from DOB and that the Place of Assembly (“PA”) application was disapproved on February 10, 2014. The Bureau’s Licensed Public Place of Assembly unit (“LPPA”) has been notified of the application and will be conducting an inspection and will issue violation orders for failure to obtain an operating permit. By letter dated June 20, 2019, the Fire Department added that the applicant’s then-latest submission shows an application filed with DOB (Alt. II 103947678) and was signed off December 20, 2006, for a sprinkler fire alarm system. According to Fire Department records, the system was installed to monitor the sprinkler booster pump, which also has a smoke detector and a central office connection; this is a residential fire alarm system and is not for commercial spaces. The photographs submitted to the Board show manual pull stations and speaker/strobe lights that were never filed with nor inspected by the Fire Department. The Department’s Fire Alarm Inspection Unit (“FAIU”) has been informed of the installation and will conduct an inspection and issue appropriate violation orders. Such orders will be to file an application to legalize the installation of the fire alarm components and to arrange for testing of the system. Additionally, LPPA inspected the site and issued the following violation orders: 1) failure to obtain a certificate of operation and provide floor plans approved by DOB; 2) failure to provide FDNY Letter of Approval for the fire alarm system; and, 3) failure to remove locking devices from fire exit. The Fire Department requests that the Board not render a decision until after an application for the fire alarm system is filed.

By letter dated December 13, 2019, the Fire Department states that the LPPA violation orders have, to date, not been corrected. The Department understands that to comply with the violation orders, the applicant would first need to obtain an extension of term of the special permit from the Board in order to obtain approvals for their Alteration Type I, Public Assembly and fire alarm

applications. The Fire Department has no objection to the Board approving this application, provided the following conditions be imposed: 1) obtain an amended certificate of occupancy; 2) obtain Public Assembly operating permit; 3) obtain Letter of Approval for the fire alarm system; and, 4) remove all illegal door hardware. The Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated October 20, 2009, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring October 20, 2029, and to *permit* a change in the hours of operation, *on condition*:

THAT a Public Assembly operating permit shall be obtained for the PCE space;

THAT a Letter of Approval for the fire alarm system shall be obtained;

THAT all illegal door hardware shall be, and remain, removed;

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 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. 183-09-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 20, 2021;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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# MINUTES

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## 322-98-BZ

APPLICANT – Law Office of Fredrick A. Becker for HUSA Management Co., LLC, owner; TSI Harlem USA LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (New York Sports Club) which expired on March 23, 2019 Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125<sup>th</sup> Street, Block 1951, Lot 22, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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## 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 April 7, 2020, at 10 A.M., for adjourned hearing.

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## 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Langston Retail LLC, owner; TSI West 145 LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) to allow the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on December 1, 2017; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C4-4D zoning district.

PREMISES AFFECTED – 86-68 Bradhurst Avenue aka 303 West 145<sup>th</sup> Street, Block 2045, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

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## 58-13-A

APPLICANT – Law Office of Jay Goldstein, for Sylvaton Holdings LLC, owner.

SUBJECT – Application December 23, 2019 – Amendment of a previously approved application permitting the development of a 3-story residential building located within the bed of a mapped street contrary to General City Law §35. R4 and M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place (28, 32 & 35 Sylvaton Terrace), Block 2827, Lot(s) 200, 203, 205, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to May 19, 2020, at 10 A.M., for continued hearing.

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## 175-14-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, for 1162 Broadway LLC, owner.

SUBJECT – Application May 24, 2019 – Amendment of a previously approved Variance (§72-21) which approved the construction a new 14-story hotel building. The amendment seeks to change the use of the proposed building from hotel use to office use; Extension of Time to Complete Construction which expired on March 25, 2019; Waiver of the Board’s Rules. M1-6 Madison Square North Historic District.

PREMISES AFFECTED – 1162 Broadway, Block 829, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to May 19, 2020, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 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 May 12, 2020, at 10 A.M., for continued hearing.

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## 2018-30-A

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for postponed hearing.

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## 2019-82-A

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019 – 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 district.

PREMISES AFFECTED – 430 St. Marks Place, Block 16, Lot 120, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to May 12, 2020, at 10 A.M., for continued hearing.

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## 2019-281-A

APPLICANT – New Cingular Wireless PCS, LLC, for Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a Forest Promenade Shopping Center, Block 1479, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to June 2, 2020, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 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 44<sup>th</sup> Road, Block 451, Lot 1, Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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### 2018-172-BZ

#### CEQR #19-BSA-024Q

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 31<sup>st</sup> Avenue, Block 728, Lot 1 & 5, Borough of Queens.

### COMMUNITY BOARD #1Q

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

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings, dated February 2, 2020, acting on New Building Application No. 420664230, reads in pertinent part:

1. ZR 24-20; ZR 23-22; ZR 23-24: The proposed exceeds the maximum number of dwelling units (19 allowed, 21 proposed);
2. ZR 23-142: The proposed does not provide the required minimum open space (5,400 SF required, 4,032 SF proposed);
3. ZR 23-142(g): The proposed does not provide the required minimum open space

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- (1,782 SF required, 1,583 SF proposed);
4. ZR 23-45: The proposed does not comply with the required front yard dimensions (10' required, 7'-11" proposed);
5. ZR 24-35: The proposed does not comply with the required side yard dimensions along 31st Avenue (9'-9" required, 0' proposed);
6. ZR 23-841: The proposed outer court exceeds the maximum permitted depth dimensions (15' max deep allowed, 48'-0" deep proposed);
7. ZR 23-631(d): The proposed exceeds the maximum permitted building base height (30' max allowed, 35'-7" proposed);
8. ZR 23-631(d): The proposed exceeds the maximum permitted building height (40' max allowed, 45'-1" proposed);
9. ZR 23-632(b): The proposed does not provide the required side and rear yard setbacks (none proposed);
10. ZR 23-861: The proposed does not provide the minimum distance between a legally required window and a side lot line (15' min required, 12'-4" proposed).

This is an application for a variance under Z.R. § 72-21 to permit, within an R5 zoning district, the construction of a four-story, with cellar and basement, multiple dwelling building containing 21 units of permanent supportive housing (the "Proposed Development") that does not comply with zoning requirements relating to maximum number of dwelling units (Z.R. §§ 23-22, 23-24, 24-20), minimum open space (Z.R. § 23-142), front yards (Z.R. § 23-45), side yards (Z.R. § 23-35), outer court dimensions (Z.R. § 23-841), maximum building heights (Z.R. § 23-631(d)), side yard setbacks (Z.R. § 23-632(b)), and minimum dimension between legally required windows and side lot line (Z.R. § 23-861).

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with continued hearings on January 28, 2020, and February 25, 2020, and then to decision on March 3, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

Community Board 1, Queens, recommends approval of the application. The Board also received letters in support of this application from a New York City Council Member and a New York State Assembly Member. The Board received 1 form letter, 13 letters, and testimony in support of this application, and 24 form letters, 3 letters, and testimony in opposition to this application. The testimony in support of the application states that they support the mission and proposal of the Non-Profit, the Proposed Development provides an important service to the needs of the community, and its future occupants will feel at home in the neighborhood. The opposition cited concerns regarding the scale of the Proposed Development and its impact on the

neighborhood character, the presence of a supportive housing building and its proximity to nearby schools, and the ability of the Premises to monitor its site conditions.

Neighbors to the Premises in opposition to the application raised concerns regarding the height of the Proposed Development and the impact that shadows may have on their properties and yards. Further, with 21 dwelling units, they fear that there will be a negative impact to traffic and parking within the neighborhood. Their concerns also focused on the ability of the applicant to control trash and debris, and prevent social issues such as littering, loitering, and noise.

## I.

The Premises are located on the northwest corner of 31st Avenue and 47th Street, in an R5 zoning district, in Queens. With approximately 120 feet of frontage along 31st Avenue, 100 feet of frontage along 47th Street, and 12,000 square feet of lot area, the Premises are occupied by a House of Worship with 7,856 square feet of community facility floor area (tax lot 1), and a two-story single-family semi-attached residential building (tax lot 5) which will be demolished to facilitate the Proposed Development.

The applicant initially proposed to demolish the existing building on tax lot 5 and develop the vacant portions of the Premises, resulting in a new four-story, with basement and cellar, multiple dwelling building with approximately 14,928 square feet of residential floor area and a total floor area of approximately 22,784 square feet but, in response to Board direction and community concern, revised the proposal to reconfigure the floor plan in a way that does not build over the easement of the adjacent residential properties, preserves the applicant's needed unit count, provides a side yard, and pulls back from the adjacent residential properties.

The applicant now proposes 14,955 square feet of residential floor area—together with the existing House of Worship, the Premises would include a total of approximately 22,811 square feet of floor area (1.9 FAR); a 7'-11" front yard (10' is required); a base building height of 35'-7" (30' is the maximum); a total height of 45'-1" (40' is the maximum); no side yard along 31st Avenue (a 9'-9" side yard is required), and a 12'-4" side yard along 47th Street that exceeds the minimum required width of 8'-10"; legally required windows facing upon the 12'-4" side yard (a minimum of 15' is required from the side lot line); 4,032 square feet of open space (5,400 square feet of open space is required) with 1,583 square feet of the open space, not in a front yard, with a minimum dimension of 12' (1,782 square feet of such open space is required); and 21 dwelling units of income-restricted housing provided as permanent supportive housing.

The Proposed Development could not be constructed as of right in an R5 zoning district, as set forth above, per Z.R. §§ 23-22, 23-24, 24-20, 23-142, 23-45, 24-35, 23-841, 23-631(d), 23-632(b). Accordingly, the applicant requests the relief set forth herein.

## II.

The Zoning Resolution vests the Board with wide

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discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21, and the Board acknowledges that the applicant, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

## A.

Consistent with Z.R. § 72-21, the applicant submits that the Premises’ history of development, which includes a historic House of Worship, and its configuration result in practical difficulties and unnecessary hardship in developing the Premises in conformance with applicable zoning regulations. Specifically, neither demolition of the House of Worship nor the enlargement of the existing building would meet the House of Worship’s programmatic needs, which require the continuation of its current program and maintaining the current configuration of the House of Worship’s sanctuary space and stained-glass windows. The applicant’s architect notes that “the freestanding character of the building, with corner views from both the southwest and southeast, should be preserved, and that the garden on the west side is a visual amenity for the neighborhood,” and represents that the House of Worship is significant architecturally and as a community resource, is an older structure that would be too costly to expand it vertically, and is also not desirable to do so because it would result in destroying the architectural character of the House of Worship, which is a historically significant structure. The House of Worship’s stained-glass windows would be covered should enlargement be attached to the House of Worship, and the windows could not be located to another of its façades. The applicant further represents that an enlargement or addition to the existing House of Worship would seriously compromise its original design and the quality of both the interior and exterior spaces on the property: the stained-glass windows within the western façade of the House of Worship are mirrored by those on the eastern façade, together with the stained-glass included over the apse at the northern façade, these three stained-glass arrays result in the symmetry that is intended to be captured and found within religious houses of worship and sanctuaries utilized by almost every major religion the world. The elimination of the stained-glass windows included in the western façade of the House of Worship would destroy its architectural and religious significance.

The programmatic needs of the Non-Profit, to provide supportive housing, create additional practical difficulties and unnecessary hardship in developing the property as-of-right. The applicant states that the Proposed Development cannot provide a fully complying front yard due to the need

to provide units of a minimum size to meet Housing and Preservation Department (“HPD”) guidelines for supportive housing: the units fronting upon the front yard are only 309 square feet in size. If the building provided a fully complying front yard of ten feet, it would not be possible to provide complying unit sizes at the lower level, thereby requiring a request of greater height to accommodate the 21 units of supportive housing included in this application.

A building with fewer units would render the Proposed Development infeasible, the City Council allocation for this project was based on a 21-unit project, and the funds could be revoked if the project count originally contemplated is substantially altered.

The as-of-right proposal includes far less floor area than otherwise permitted on the zoning lot if the House of Worship were to be demolished. Further, the as-of-right scenario demonstrates that development of the zoning lot that retains the House of Worship requires constructing immediately up against its western wall, which would destroy its historical character as a one-story free-standing house of worship surrounded by open spaces. As-of-right construction would enlarge “around” the House of Worship. Given the location of the House of Worship, any new development would only be feasible along its west side. However, even when abutting immediately up against it, its large presence on the Premises results in as-of-right development that severely limits the ability to utilize floor area generated by the zoning lot. New as-of-right development that avoids the demolition of the House of Worship results in only approximately 8,701 square feet of floor area and only up to a maximum of nine units. Not only does the as-of-right alternative that avoids demolition of the House of Worship severely limit the amount of permitted floor area on the zoning lot that can be utilized by the Proposed Development, the as-of-right scheme would block the west windows of the main sanctuary and the basement level parish hall, destroying the interior symmetry of the main worship space and reducing its natural light.

Accordingly, the Board finds that the above historical character of the House of Worship and its location on the Premises, along with the programmatic needs of the House of Worship and Non-Profit, result in practical difficulties and unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

## B.

Because the Applicant is a non-profit organization and the variance is requested to further its non-profit mission, the finding set forth in Z.R. § 72-21(b) is not required in order to grant the subject variance.

## C.

The applicant submits that the Proposed Development would not alter neighborhood character, impair the appropriate use or development of adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied maps of the Premises and the surrounding area, diagrams detailing the lot coverage, front and side yard depths of buildings located within 400



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feet of the Premises, maps showing the location of taller buildings in the surrounding area, both in terms of their number of stories and height, bird's eye view aerials of the Premises and surrounding area which provide visual context to the issue of the building's height and scale, and, a photographic streetscape illustrating the effect of the proposed construction on both the 31st Avenue and 47th Street blockfronts.

The Proposed Development is located in a predominantly residential neighborhood with large community facility buildings. The neighborhood's residential building stock is comprised of a mix of detached, semi-detached, and attached houses, along with several apartment buildings ranging from three to six stories in height. A height map of the area demonstrates that many of these buildings range in height from 40 to 47 feet tall. Most of the neighborhood's townhouses have little or no front yard, and side yards that are paved and devoted to accessing rear yard parking. The apartment building stock ranges from small three- and four-story buildings, to larger (high lot coverage) five- and six-story buildings.

As to open area and lot coverage, viewing the area between the two buildings of the Proposed Development as a sort of side yard, the space between the buildings is typical of the neighborhood. The space between the two buildings is very generous. Although R5 zoning requires a single side yard of 8 feet, or two side yards totaling 13 feet, noncompliance is widespread. When viewed as a side yard, the 20-foot-wide passageway between the buildings is generous. Further, a lot coverage diagram, which documents conditions within 400 feet of the Premises, demonstrates that the proposed lot coverage of 55.45% (where 60% is permitted for corner lots), is well within the range of existing conditions nearby, and is comports with the character for this area.

As to the yards, 47 of the 116 properties in the surrounding 400 feet (40.5%) do not provide a complying front yard as the vast majority of these buildings were constructed prior to the adoption of the 1961 Zoning Resolution. Many of the neighborhood's front yards are paved, and, thus, appear to be little more than an extension to the public sidewalk. The proposed 7'-11" front yard, beyond being characteristic of the neighborhood, will be a continuation of the uniform street wall along the northern side of 31st Avenue between 46th Street and 47th Street, allowing the new building to fit into the streetscape. A review the area's side yards shows that buildings that do provide a side yard typically provide one that is shallower than zoning requires; some side yards being as narrow as one or two feet. Many of the area's attached buildings have been converted to multi-family occupancy, despite having no side yards at all. The new attached building will extend slightly deeper from the street. The home adjacent to the north of the Premises is built nearly to the shared lot line. The Proposed Development will only extend to this shared lot line where it meets the rear yard of the adjacent home. The lot line condition will measure a 28'-11" where the adjacent home appears to have a rear yard of 40 feet.

As to the height, several buildings exceed 40 feet in height. Across the street from the Premises, a four-story school is 64 feet tall; on the next corner to the west, a four-story school is 68 feet tall; further away is an 85-foot tall school; and, another school is 75 feet tall. Aside from being noncompliant with respect to building height, all of these buildings are community facilities, which reflect the concept of civic architecture, in that greater scale is given to those institutions that are of greater importance to the community; these buildings all rise to their full height without a setback, presumably because larger floor plates are necessary to satisfy their programmatic needs; and, all of these community facilities are located on 31st Avenue as opposed to a side street. The applicant argues that taller buildings belong, if anywhere, on wider streets such as 31st Avenue and, not only are there buildings exceeding the 40-foot height limit along 31st Avenue, to a lesser extent, they are also located on the neighborhood's side streets.

In response to community and Board direction, the applicant revised the initial proposal by pulling back the building so as to not construct over the adjacent properties' easement, provided a shadow analysis demonstrating the proposed building has less of an impact on adjacent residences, provided a side yard, relocated the trash compactor to the cellar, and submitted an operational plan committing to regular trash, debris, and recycling pickup, and to monitor loitering and trespass, site conditions, and to conduct outreach with the community regarding any issues that arise from the operation of the Proposed Development.

By letter dated September 23, 2019, the Fire Department objected to the application and states that Fire Department access to the fourth floor and the roof over the fourth floor has not been provided for fire operations, as per Section FC504. The Fire Department would access the fourth floor via ladder operations from 31st Avenue and would need rooftop access and clearances as described in Section FC504.4.1. Access to the roof over the fourth floor would also need to be provided either by a fixed ladder or other approved means. The plans show a vegetated roof at the fourth floor, which shall not obstruct access and requires compliance with section FC 504.4.9.2. The proposed solar panel canopy must also be designed, installed, operated and maintained in accordance with Section FCFC512.

By letter dated January 27, 2020, the Fire Department states that they reviewed revised plans and find them acceptable to the Department. A 6'-0" FDNY access path is shown for the fourth floor and a ladder is also being provided to access the roof over the fourth floor. Based upon the foregoing the Department has no objection to the above referenced application and the Bureau of Fire Prevention will inspect the Premises for compliance and enforce all applicable rules and regulations.

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

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## D.

The applicant notes that the above unique physical conditions, including the historic nature of the House of Worship building, present practical difficulties or unnecessary hardship. The hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history and layout.

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

## E.

The applicant submits that the Proposed Development reflects the minimum variance necessary to meet the programmatic needs of the Non-Profit within the intents and purposes of the Zoning Resolution. The applicant has demonstrated that they cannot meet the programmatic needs of the House of Worship or Non-Profit with a smaller building, fewer units, smaller units, or fewer support spaces. Without this underlying funding the loan source would not be available, making the Proposed Development infeasible to finance and construct. The Proposed Development has been designed to meet the minimum requirements of HPD's design guidelines for supportive housing, with no excess floor area or program area that can be reduced.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

## III.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA054Q (February 10, 2020).

The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction.

The Landmarks Preservation Commission represents by correspondence dated July 2, 2019, that there are no archaeological or architectural concerns.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. § 72-21 to *permit*—on a site located within an

R5 zoning district—the construction of a four-story, with cellar and basement, multiple dwelling building containing 21 units of permanent supportive housing that does not comply with zoning requirements relating to maximum number of dwelling units, minimum open space, front yards, side yards, outer court dimensions, maximum building heights, side yard setbacks, and minimum dimension between legally required windows and side lot line, contrary to Z.R. §§ 23-22, 23-24, 24-20, 23-142, 23-45, 24-35, 23-841, 23-631(d), 23-632(b); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received February 25, 2020”—twelve (12) sheets; and *on further condition*:

That the bulk parameters of the building shall be as follows: a maximum of 22,811 square feet of floor area (1.9 floor area ratio); a minimum 7'-11" front yard; a maximum base building height of 35'-7"; a maximum total height of 45'-1"; no side yard along 31st Avenue, and a 12'-4" side yard along 47th Street; legally required windows facing upon the 12'-4" side yard; a minimum of 4,032 square feet of open space with a minimum of 1,583 square feet of the open space, not in a front yard, with a minimum dimension of 12'; and, a minimum of 21 units of income restricted housing units provided as permanent supportive housing units;

That if recycling and/or trash pickups are not performed frequently enough to prevent their becoming a nuisance, pickup days, in addition to those contained in the operational plan, shall be added;

THAT the operational plan shall be adhered to as follows:

Storage of Garbage and Recycling: all garbage and recycling produced at the Premises shall be brought to the compactor room located within the basement of the new permanent supportive housing residence building for compacting. Users of the new building will utilize the trash chute located on each floor to transport their personal garbage to the compactor room. Garbage and recycling generated by users within the House of Worship shall be transported to the compactor room located within the basement of the new building in commercial grade tightly sealed leak-proof roll-away refuse containers. The containers will be brought into the new building through its egress door leading to the courtyard. The containers will then be brought to the compactor located in the basement of the new building through the elevator located accessible from the egress door. All compacted garbage and recycling generated by the Premises will be stored within the facility until it is transported to the sidewalk for curbside pick-up in accordance with the times set forth in the plan. Compacted garbage and recycling will be brought to the sidewalk for curbside pick-up in accordance with the times set forth in this plan. (Person responsible: Facilities Manager/Superintendent; Daily)

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Department of Sanitation Pick-Up: Each Monday and Thursday evening after 10 p.m. the Facilities Manager shall place the refuse containers or compacted garbage, as the case may be, along the curb in front of the Premises in a neat and orderly row. Such items shall be arranged in as consolidated a manner as possible, so as to provide the maximum amount of pedestrian passage along the sidewalk as may be possible. And in no event shall refuse every be arranged in a manner that will obstruct clear pedestrian passage.

The Operations Manager will document the time of placement of refuse on the curb in a spreadsheet accessible on shared drive by AFC's Deputy Executive Director of Operations, the Director of Facilities and the Facilities Manager. Immediately after the Department of Sanitation makes a pick-up, any debris or litter that remains on the sidewalk will be removed by the on-site staff and properly stored in accordance with this plan until the next disposal day. (Person Responsible: Facilities Manager/Superintendent; Monday and Thursday after 10 p.m., Tuesday and Friday a.m. pickup)

Waste Management Company Garbage Pick-Up: Each Sunday and Wednesday evening between the hours of 9 p.m. and 10 p.m. the Facilities Manager shall place the refuse containers or compacted garbage, as the case may be, along the curb of the sidewalk located in front of the Premises in a neat and orderly row. Such items shall be arranged in a consolidated manner, so as to provide the maximum amount of passage along the sidewalk as may be possible for pedestrian utilizing the public right of way. In no event shall refuse every be arranged in a manner that will obstruct clear pedestrian passage. The Facilities Manager will document the time of placement of refuse on the curb in a spreadsheet accessible on shared drive by AFC's Deputy Executive Director of Operations, the Director of Facilities and the Facilities Manager. Stickers are required when utilizing the private waste management company to differentiate garbage generated by the Premises from garbage that is not generated by the Premises. Immediately after the private waste management company makes a pick-up, any debris or litter that remains on the sidewalk will be removed by the staff on site and properly stored within the Premises until the next garbage disposal day. (Person Responsible: Facilities Manager/Superintendent; Sunday and Wednesday between 9 p.m. and 10 p.m., Sunday and Wednesday PM pickup)

Recycling Pickup: Each Sunday between 9 p.m. to 10 p.m. and each Thursday after 10 p.m. the Facilities Manager shall place recycling along the

curb of the sidewalk located in front of the Premises in a neat and orderly row. Such items shall be arranged in a consolidated manner, so as to provide the maximum amount of passage along the sidewalk as may be possible for pedestrian utilizing the public right of way. In no event shall refuse every be arranged in a manner that will obstruct clear pedestrian passage.

The Facilities Manager will document the time of placement of recycling on the curb in a spreadsheet accessible on shared drive by AFC's Deputy Executive Director of Operations, the Director of Facilities and the Facilities Manager. Immediately after the City or private waste management company makes a recycling pick-up, any debris or litter that remains on the sidewalk will be removed by the staff on site and properly stored within the Premises until the next disposal day. (Person Responsible: Facilities Manager/Superintendent; Sunday between 9 p.m. to 10 p.m. and Thursday after 10 p.m., Sunday p.m. pickup by private waste management company, and Friday a.m. pickup by NYC Department of Sanitation)

Missed Garbage Pick Up (NYC): In the event that the garbage is not picked up by the Department of Sanitation within the time period allotted to the Premises for curb-side pick-up, the Facilities Manager will immediately return the uncollected garbage to the designated refuse storage area, will then contact 311 to report incident, and will forward ticket number to Director of Facilities via email. (Person Responsible: Facilities Manager/Superintendent; Immediate and as needed)

Missed Garbage Pick-Up (Private): In the event that the garbage is not picked up by the private waste disposal company within the time period agreed upon with the company for pick up, the Facilities Manager on duty will immediately return the uncollected garbage to the designated refuse storage area at, and will then report the incident to the Director of Facilities via phone. (Person Responsible: Facilities Manager/Superintendent; Immediate and as needed)

Unauthorized Disposal of Large Items: In the event of illegal dumping i.e. large size items such as mattresses, the Facilities Manager on duty will immediately store illegally dumped item within the designated refuse storage area at the Premises, will then contact 311 to report incident, and will forward ticket number to Director of Facilities via email. The Facilities Manager will then arrange to set out the illegally dumped item on the curb for Department of Sanitation pick up in accordance with their rules and regulations applying to oversized items or items that are not permitted to

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be left out for regular curb-side garbage pick-up. (Person Responsible: Facilities Manager/Superintendent; Immediate and as needed)

**Loitering/Trespassing:** All Astoria residents must adhere to the following curfew (consistent with the resident agreement): Sunday-Thursday 9:30 p.m., Friday and Saturday 12:00 a.m. Residents will be continually be advised at weekly Resident Advisory Board meetings of the AFC loitering policy, including that AFC clients who loiter at or around AFC residential sites are subject to immediate discharge. A Youth Counselor will be on Premise ensuring that clients are not loitering near the Premises and will ensure compliance of this rule by performing perimeter grounds check every half-hour throughout each day. (Person Responsible: Youth Counselor; Immediate, Daily grounds check every 30 minutes, reminders of loitering policy will be given at weekly meetings). **Sidewalks and Gutters:** Beginning each morning at sunrise, and at regular intervals throughout the day, the Facilities Manager shall ensure that the sidewalks and gutters along the perimeter of the Premises shall be kept free and clear of debris. All debris that collects on the sidewalk or in the gutters in front of the Premises shall be reported and immediately swept up and properly disposed of in accordance with this plan. (Person Responsible: Facilities Manager/Superintendent; Immediate, Daily – ongoing throughout the day) **Remote and On-Site Monitoring:** AFC will add additional monitoring systems (cameras and light sensors) to supervise the Premises. Remote monitoring will include onsite and offsite closed circuit camera supervision of the designated refuse storage area and the sidewalks surrounding the Premises, to ensure that the staff responsible for trash and recycling storage and disposal are following the procedures set forth in this plan. Monitoring systems will also assist AFC supervisors, counselors and staff to review client activity on and around the Premises. This camera system will be monitored by AFC's Manager of Operations, AFC's Facilities Manager, and AFC's Director of Facilities. This team, comprised of on-site and off-site members, will provide oversight ensuring the procedures outline in this plan are followed. (Person Responsible: Facilities Manager/Superintendent; Immediate, Daily – ongoing throughout the day);

That a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-172-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 February 26, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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**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 29<sup>th</sup> Street, Block 804, Lot 63, Borough of Manhattan.

**COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 17, 2019, at 10 A.M. for decision, hearing closed.

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**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 70<sup>th</sup> Street, Block 1385, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 17, 2019, at 10 A.M. for decision, hearing closed.

# 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 April 7, 2020, at 10 A.M., for continued hearing.

## 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 18<sup>th</sup> Avenue, Block 5439, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to May 19, 2020, at 10 A.M., for adjourned hearing.

## 2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to April 21, 2020, at 10 A.M., for continued hearing.

## REGULAR MEETING

TUESDAY AFTERNOON, MARCH 3, 2020  
1:00 P.M.

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

## ZONING CALENDAR

### 2019-28-BZ

#### CEQR #19-BSA-086K

APPLICANT – Akerman LLP, for 485 Kings Corp., owner; OTB2NY LLC, lessee.

SUBJECT – Application February 5, 2019 – 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.

PREMISES AFFECTED – 485 Kings Highway, Block 6658, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 7, 2019, acting on DOB Alteration Type I Application No. 322065769, reads in pertinent part:

“The proposed physical culture establishment is not permitted as-of-right in an R6A/C2-4 zoning district per Z.R. Sections 32-10 and 32-31, and therefore requires a special permit from the Board of Standards and Appeals pursuant to Z.R. Section 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in an R6A/C2-4 zoning district and the Special Ocean Parkway District, the operation of a physical culture establishment on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Sheta performed an inspection of the site and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board was also in receipt of two form letters in support of this application.

The Premises are located on the north side of Kings Highway, between McDonald Avenue and East 2nd Street, in an R6A (C2-4) zoning district and in the Special Ocean Parkway District, in Brooklyn. The Premises have

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approximately 83 feet of frontage along Kings Highway, a depth ranging between 104 feet and 101 feet, 8,530 square feet of lot area and are occupied by a two-story with cellar commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 3,954 square feet of floor area on a portion of the first floor with a training studio, lobby/reception area, restrooms, shower rooms, and a utility room. The PCE has been in operation since May 24, 2019, as “Orangetheory Fitness,” with the following hours of operation: Monday through Friday, 5:00 a.m. to 10:00 p.m., Saturday, 7:00 a.m. to 1:00 p.m., and Sunday, 6:00 a.m. to 2:00 p.m. The applicant represents that PCE use will not impair the essential character of the surrounding neighborhood because it is located an existing commercial building in an area predominately characterized by commercial uses including retail stores, eating and drinking establishments, offices, and other PCEs, including the buildings adjacent to the Premises are both entirely commercial. In addition, the applicant submits that sound attenuation measures, including attenuating demising walls and ceilings with air gaps between the wall and insulation, and 2-3/4” thick floor tiles installed in the gym studio area, have been provided within the space so as to not disturb other tenants in the building. 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.

The applicant states that the PCE provides facilitates for classes, instructions, and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including a connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated March 3, 2020, the Fire Department states the Premises have a fire suppression system (sprinkler) that has been tested and witnessed to the Bureau of Fire Prevention satisfaction; an

application has been filed to provide a fire alarm system throughout the entire building, therefore a fire alarm system for the Physical Culture Establishment shall be provided and tied into the new system; 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. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA086K, dated February 6, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The Board notes that the terms of this grant has been reduced to reflect the period of time that the PCE 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 Z.R. §§ 73-36 and 73-03 to legalize, in an R6A/C2-4 zoning district and the Special Ocean Parkway District, the operation of a physical culture establishment on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 12, 2020”- Six (6) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring May 24, 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 a 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 a new fire alarm for the PCE shall be provided and tied into the new building-wide system.

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

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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. 2019-28-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 13, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

requires a special permit from the Board of Standards and Appeals pursuant to Z.R. Section 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in an M1-6/R10 zoning district and the Special Long Island City Mixed Use District, the operation of a physical culture establishment (“PCE”) on a portion of the cellar level and first floor, contrary to Z.R. § 42-10.

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Vice-Chair Chanda and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 1, Queens, recommends approval of this application.

The Premises are located on the south side of Northern Boulevard, between Queens Boulevard and 41st Avenue, in Queens. The Premises have approximately 237 feet of frontage along Northern Boulevard, 148 feet of depth, 231,779 square feet of lot area and are occupied by a 44-story building with cellar mixed-use residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 4,306 square feet of floor area on the first floor, including a reception desk, exercise areas equipped with cardiovascular and weightlifting machines, and a spa area with massage chairs, hydro-massage chairs, tanning booths, and a light therapy booth, and 13,889 square feet of floor space in the cellar, including exercise areas equipped with cardiovascular and weightlifting machines, locker rooms with showers, changing area, and restrooms. The PCE has been in operation since January 3, 2020, as “Planet Fitness,” and operates 24 hours a day, seven days a week. The applicant represents that the PCE use is consistent with the mixed-use character of the area, where commercial uses provide retail and services to local residents. 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 nine-millimeter thick rubber flooring and the PCE space is separated from residential portions of the building by two intervening floors. 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

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**2019-204-BZ**

**CEQR #20-BSA-016Q**

APPLICANT – Akerman LLP, for QSB Northern LLC, owner; 29-22 Northern Boulevard Fitness Group LLC, owner.

SUBJECT – Application August 14, 2019 – 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.

PREMISES AFFECTED – 29-22 Northern Boulevard, Block 239, Lot 7501, Borough of Queens.

**COMMUNITY BOARD #1Q**

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

**THE VOTE** –

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

**THE RESOLUTION** –

The decision of the Department of Buildings (“DOB”), dated August 5, 2019, acting on DOB New Building Application No. 420650398, reads in pertinent part:

“Z.R. 42-10: The proposed Physical Culture Establishment (gym) use is not permitted as [of] right in the M1-6/R10 Zoning District per Section 42-10 and Z.R. 123-20, and therefore

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surrounding area.

The applicant states that the PCE contains facilities for classes, instructions, and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including a connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated March 3, 2020, the Fire Department states these premises have a fire suppression system (standpipe and sprinkler) and a fire alarm system that have been signed-off according to the Department of Buildings Building Information System (“BIS”); an application for a Place of Assembly operating permit has not been filed and according to the Notice of Comments, dated January 19, 2019, an application will be filed after obtaining the requested special permit for PCE use; 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. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA016Q, dated August 26, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. 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 Z.R. §§ 73-36 and 73-03 to legalize the operation of a physical culture establishment on a portion of the cellar level and first floor, contrary to Z.R. § 42-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 3, 2020” - Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 3, 2030;

THAT there shall be no change in ownership or

operating control of the physical culture establishment without prior application to and approval from the Board;

THAT 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 a 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. 2019-204-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 15, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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**2019-260-BZ**

**CEQR #20-BSA-023M**

APPLICANT – Law Office of Jay Goldstein, for 233 East 34<sup>th</sup> Street LLC, owner; RH 34 LLC, lessee.

SUBJECT – Application September 9, 2019 – 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.

PREMISES AFFECTED – 233 East 34<sup>th</sup> Street, Block 915, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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

THE VOTE –



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# MINUTES

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

Negative:.....0

## THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 9, 2019, acting on DOB Alteration Type I Application No. 123881941, reads in pertinent part:

“A #Physical Culture Establishment# is not allowed as-of-right in a C1-9A zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C1-9A zoning district, the operation of a physical culture establishment (“PCE”), contrary to Z.R. § 32-10.

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 6, Manhattan, waived its recommendation of this application.

The Premises are located on north side of East 34th street, between 2nd Avenue and Queens Midtown Tunnel Exit, in a C1-9A zoning district, in Manhattan. The Premises have approximately 25 feet of frontage along East 34th Street, 99 feet of depth, 2,468 square feet of lot area and are occupied by a five-story with cellar mixed-used residential and commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available. The subject PCE occupies 2,116 square feet of floor area on the first floor, including a reception area, bathrooms, a shower and the studio and 687 square feet of floor space in the cellar, used exclusively for storage. The PCE has been in operation since September 2019, as “Row House,” with the following hours of operation: Monday through Friday, 6:00 a.m. to 8:30 p.m. and Saturday and Sunday, 8:00 a.m. to 6:00 p.m. The applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the Premises has pedestrian access

to mass transit facilities within the vicinity. 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. These measures include all typical partitions at the studio are isolated four inches from the adjacent structure with two layers of sheetrock in studio and two layers outside studio, with” sound attenuated batt insulation; all flooring at the studio is four inch thick rubber mat on top of sound attenuating flooring; all penetrations at studio ceilings and partitions are sealed with mineral fiber insulation and caulked; studio doors have acoustic seals; ceiling at studio are protected by two layers of sheetrock hung on isolators. 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.

The applicant states that the PCE provides a group exercise studio for instructional classes for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory.

The applicant represents that the premises is not equipped with a fire alarm or sprinkler system, as it is not required per the Board’s guidelines. By letter dated February 29, 2020, the Fire Department states these premises do not have nor are required to have a fire suppression or fire alarm system as per the current NYC Construction Code; 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.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA023M, dated September 9, 2019.

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

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required findings under Z.R. §§ 73-36 and 73-03 East 34th Street-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 3, 2020”-Four (4) sheets; *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring September 1, 2029;

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

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

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. 2019-260-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 \*, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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**2019-274-BZ**

**CEQR #20-BSA-036M**

APPLICANT – Akerman LLP, for Metropolitan Management LLC, owner; Rowgatta 31 W 14<sup>th</sup> LLC, lessee. SUBJECT – Application October 16, 2019 – 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.

PREMISES AFFECTED – 31 West 14<sup>th</sup> Street, Block 816, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 25, 2019, acting on DOB Alteration Type I Application No. 123882799, reads in pertinent part:

“A #Physical Culture Establishment# is not allowed as-of-right in a C6-2M zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C6-2M zoning district, the operation of a physical culture establishment (“PCE”) on the cellar level and first floor, contrary to Z.R. § 32-10.

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application. The Board was in receipt of one form letter in support of this application.

The Premises are located on the north side of West 14th Street, between Fifth Avenue and Avenue of the Americas, in a C6-2M zoning district, in Manhattan. The Premises have approximately 25 feet of frontage along West 14th Street, a depth ranging between 96 feet and 102 feet, 2,463 square feet of lot area and is occupied by a one-story with cellar commercial building.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 2,305 square feet of floor area on the first floor, including a lobby with reception desk and exercise areas equipped with rowing machines and workout benches, and 2,078 square feet of floor space in the cellar, including an exercise area equipped with rowing machines, men’s and women’s locker room with showers, changing areas and restrooms. the PCE has been in operation since September 13, 2019, as “Rowgatta,” with

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# MINUTES

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the following hours of operation: Monday through Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 5:00 a.m. to 8:00 p.m. The applicant represents that the PCE use will not impair the essential character of the surrounding area because it is the only tenant in the Premises and is consistent with the commercial character of the area, which includes retail and service establishments. In addition, the applicant represents that sound attenuation measures are not necessary as it is the only tenant in one-story commercial building. 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. The applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory. The applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including a connection to an FDNY-approved central station—has been installed in the entire PCE space. By letter dated February 29, 2020, the Fire Department states applications have been filed with the Department of Buildings for a new sprinkler and fire alarm system, which are currently being tested and inspected by the Bureau 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.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA036M, dated October 16, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. 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 Z.R. §§ 73-36 and 73-03 to *legalize*, in a C6-2M zoning district, the operation of a physical culture establishment (“PCE”) on the cellar level and first

floor, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received December 16, 2019”- Six (6) sheets. *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring September 13, 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 a 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 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. 2019-274-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 13, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, March 3, 2020.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, Nos. 11-12

March 27, 2020

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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<b>HEARINGS HELD -</b>	<b>22 Reade Street, Spector Hall, New York, N.Y. 10007</b>
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Tuesday, March 17, 2020**

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24-09-BZ	78-10 164 <sup>th</sup> Road, Queens
2019-185-A	57 Fletcher Street, Staten Island
2019-186-A	53 Fletcher Street, Staten Island
2019-303-A	55 Eckford Street, Brooklyn
2016-1215-BZ	142 West 29 <sup>th</sup> Street, Manhattan
2018-171-BZ	1 East 70 <sup>th</sup> Street, Manhatta
2016-4149-BZ	500-508 Van Nest Avenue, Bronx
2016-4264-BZ	194 Moffat Street, Brooklyn
2017-270-BZ	1434 Utica Avenue, Brooklyn
2017-272-BZ	10-19 46 <sup>th</sup> Road, Queens
2018-15-BZ	250 West 26 <sup>th</sup> Street, Manhattan
2018-91-BZ	78-80 Leonard Street, aka 79 Worth Street, Manhattan
2018-137-BZ	251-77 Jericho Turnpike, Queens
2018-145-BZ	251-73 Jericho Turnpike, Queens
2019-21-BZ	2223 East 14 <sup>th</sup> Street, Brooklyn
2019-22-BZ	24-47 95 <sup>th</sup> Street, Queens
2019-64-BZ	1334 East 24 <sup>th</sup> Street, Brooklyn
2019-74-BZ	112-51 Northern Boulevard, Queens
2019-165-BZ	1375 East 26 <sup>th</sup> Street, Brooklyn

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# DOCKETS

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New Case Filed Up to March 17, 2020  
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**2020-19-BZ**

133-27 39th Avenue, Block 04972, Lot(s) 7504, Borough of **Queens, Community Board: 7**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) located in the cellar and a portion of the first floor of an existing building contrary to ZR §32-10. C4-2 zoning districts. C4-2 district.  
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**2020-20-BZ**

245 Park Avenue, Block 01301, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (SSWING) to be located on a portion of the first floor of an existing 45-story commercial building contrary to ZR §32-10. C5-3 (MID) zoning district. C5-3 (MID) district.  
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**2020-21-BZ**

15 West 39th Street, Block 00841, Lot(s) 27, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Sportslab) to be located on the fourth floor of an existing commercial building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.  
-----

**2020-22-BZ**

33-12 38th Avenue, Block 00602, Lot(s) 34, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) within an existing building contrary to ZR §42-10. M1-1 zoning district M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**REGULAR MEETING**  
**APRIL 7, 2020, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 7, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDERED CALENDAR**

**551-37-BZ**

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**334-78-BZ**

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

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

**COMMUNITY BOARD #11Q**

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**122-95-BZ**

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

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

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

**COMMUNITY BOARD #12Q**

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**72-04-BZ**

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**APPEALS CALENDAR**

**2018-35-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Richmond County Construction and Development Corp., owner.

SUBJECT – Application March 5, 2018 – Variance of the 2014 Building Code to permit the change in use and corresponding alteration of an existing building contrary to §28-101.4.1 to §28-101.4.4 of the building code. M-1 zoning district.

PREMISES AFFECTED – 22 Van Street, Block 187, Lot 152, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**2019-90-A**

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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# CALENDAR

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**REGULAR MEETING  
APRIL 7, 2020, 1:00 P.M.**

**COMMUNITY BOARD #7BK**  
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**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 7, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

*Margery Perlmutter, Chair/Commissioner*

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**ZONING CALENDAR**

**2018-142-BZ**

APPLICANT – Dennis P. George, owner.  
SUBJECT – Application August 29, 2018 – Variance (§72-21) to permit the development of a two-story plus attic & cellar Use Group (“UG”) 2 residential building contrary to ZR §§22-00 (Zero Lot line building) & § 32-461a (Side Yard less than minimum required). R3-1 zoning district.  
PREMISES AFFECTED – 204-23 46<sup>th</sup> Road, Block 7304, Lot 53, Borough of Queens.

**COMMUNITY BOARD #19Q**  
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**2019-187-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bricktown Pass LLC, owner; Furie Spa Inc., lessee.  
SUBJECT – Application July 3, 2019 – 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.  
PREMISES AFFECTED – 205 Bricktown Way, Block 7452, Lot 100, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**2019-205-BZ**

APPLICANT – Goldman Harris LLC, for Jean’s Place Housing Development Fund Corporation, owner.  
SUBJECT – Application August 16, 2019 – Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 zoning district.  
PREMISES AFFECTED – 485 Van Sinderen Avenue, Block 3799, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**  
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**2020-2-BZ**

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.  
SUBJECT – Application January 8, 2020 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R6B zoning district.  
PREMISES AFFECTED – 318-320 54<sup>th</sup> Street (aka 5401 3<sup>rd</sup> Avenue) Block 822, Lot 11, Borough of Brooklyn.



# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 17, 2020 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 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

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 4, 2020, at 10 A.M., for decision, hearing closed.

#### 24-09-BZ

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

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

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

#### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to June 29, 2020, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

#### 2019-185-A

APPLICANT – P. Vengoechea/T. Boyland; V&B Architecture; for Raymond Giffen Sr. Trust, owner.

SUBJECT – Application July 2, 2019 – 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.

PREMISES AFFECTED – 57 Fletcher Street, Block 2974, Lot 4. 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 May 18, 2020, at 10 A.M., for decision, hearing closed.

#### 2019-186-A

APPLICANT – P. Vengoechea/T. Boyland; V&B Architecture; for Raymond Giffen Sr. Trust, owner.

SUBJECT – Application July 2, 2019 – 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.

PREMISES AFFECTED – 53 Fletcher Street, Block 2974, Lot 7. 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 May 18, 2020, at 10 A.M., for decision, hearing closed.

#### 2019-303-A

APPLICANT – Sheldon Lobel, P.C., for 55 Eckford Acquisition LLC, lessee.

SUBJECT – Application December 10, 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 zoning district regulations. M1-2/R6B, R6A and MX-8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, Block 2698, Lot 32. Borough of Brooklyn.

#### COMMUNITY BOARD #1BK

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 18,

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# MINUTES

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2020, at 10 A.M., for decision, hearing closed.

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## 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 29<sup>th</sup> Street, Block 804, Lot 63, 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

Adopted by the Board of Standards and Appeals, March 17, 2020.

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### 2018-171-BZ

#### CEQR No. 19-BSA-053M

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 70<sup>th</sup> Street, Block 1385, 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, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 4, 2019, acting on Alteration Application No. 121188794, reads in pertinent part: “The proposed addition exceeds the 60-foot height limit in the R8B/LH1-A portion of the zoning lot, contrary to ZR 24-591 . . . The proposed addition exceeds the 70% maximum permitted lot coverage in the R8B/LH-1A portion of the zoning lot, contrary to ZR 24-11. . . . The proposed addition is located within the required 30-foot rear yard, contrary to ZR 24-33 and 24-36

. . . The proposed addition does not comply with the street wall location requirements of ZR 23-661 . . . The proposed addition does not comply with the height and setback requirements of ZR 23-662.” Additionally, the decision of the Department of Buildings, dated October 3, 2018, acting on Alteration Application No. 121188794, reads in pertinent part: “The proposed addition is located within the required 60-foot rear yard equivalent, contrary to ZR 24-33 and ZR 24-382.”

This is an application for a variance under Z.R. § 72-21 to permit—partially in an R10 zoning district within the Special Park Improvement District and partially in an R8B zoning district within the Limited Height District 1A—the enlargement of an existing landmarked building used as a museum and library that would not comply with zoning regulations for height (Z.R. § 24-591), lot coverage (Z.R. § 24-11), rear yards (Z.R. §§ 24-33 and 24-36), street-wall location and setback (Z.R. §§ 23-661 and 23-662), and rear-yard equivalent (Z.R. §§ 24-33 and 24-382).

This application is brought by The Frick Collection (the “Museum”), an educational institution located in a New York City-designated individual landmark building that serves as a historic house and art museum and research center with reference library that provides fellowship programs for graduate students and scholars, student internships, workshops for researchers and specialists, lectures and symposia, guided school visits, and after-school programs.

A public hearing was held on this application on March 20, 2019, after due notice by publication in *The City Record*, with continued hearings on June 4, 2019, July 23, 2019, September 17, 2019, November 19, 2019, January 28, 2020, February 25, 2020, and then to decision on March 17, 2020. Because of the outbreak of a novel coronavirus (COVID-19), the Board’s commissioners cast their votes by live-streamed teleconference as authorized by the Governor’s Executive Order No. 202.1 of 2020.

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

Community Board 8, Manhattan, waives its recommendation. Cultural institutions, civic associations, elected officials, and area residents presented testimony supporting and opposing this application.

Those in favor supported the Museum’s attempts to renovate and modernize while staying true to its educational mission. Specifically, proponents of the application detail the Museum’s need to expand and modernize its spaces. The proposed expansion would also allow the Museum to open up the second floor of the original early 20th century residence to the public for the first time—which the proponents feel is the best way to further the Museum’s educational mission while preserving the building’s history. The Museum has a growing need for updating its operational and administrative spaces used for receiving and storing works of art, as well as their conservation, upkeep, and care: the Museum has struggled to perform its duties as

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# MINUTES

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custodians of artworks with cramped spaces, some of which have substandard preservation and restoration equipment due to space restrictions or have substandard conditions, such as a lack of full-spectrum natural light in paper-restoration spaces. Additionally, the existing circulation routes used for transporting artwork within the Building are unduly circuitous and foster opportunities for accidents to occur. These changes, the proponents state, will provide the Museum with the necessary space, safety, light, air, and security to transport and maintain throughout the Building. Further, alterations are necessary to serve what the Museum has detailed as ineffective circulation, for both patrons and employees of the museum. Circulation spaces cannot accommodate large groups, and direct access to instructional spaces for school groups from East 71st Street would enhance the Museum's educational mission. The addition of a café to the museum will attract both younger and elder patrons to the museum with a new service, comparable to most museums and art institutions. Renovated elevators will also accommodate more than one wheelchair.

In contrast, those in opposition (collectively, the "Opposition") posed concerns about the duration of construction and potential impacts posed by dust and noise, the massing and height of the proposed enlargement, and the potential destruction of the Premises' historic features and character. The Opposition first focuses on the potential for detrimental environmental impacts resulting from the proposed construction. The Opposition states that, absent a targeted environmental impact statement, the construction impacts will be excessive and unacceptable: construction equipment will create too much traffic, construction noise will exceed acceptable perceptible levels throughout the neighborhood, and the construction debris will pose serious health risks to the surrounding area. Next, the Opposition believes that the Museum should use off-site spaces to expand and modernize their operational and administrative spaces and must preserve the Museum and parts of the historic house to the greatest extent possible and oppose the notion that the museum, programmatically, requires cafés. The Opposition also alleges that alternative proposals would allow the Museum to expand underground, like the Morgan Library, while still meeting its programmatic needs. With respect to the destruction and loss of historic spaces, the Opposition cited concerns with unnecessary demolition of exterior walls and interior spaces, including portions of the building facing the historic garden, portions of the library, the reception area, and a lecture hall used for music performances (the "Music Room"). The Opposition focused many of these comments on the proposed demolition of the Music Room—described by Opposition as one of the City's few remaining spaces with salon-style music performances—where many have enjoyed the unique acoustics and architecture as a setting for one-of-a-kind musical performances, concerts, and lectures. The Opposition alleges that the Music Room must be preserved in both its configuration and use as a music room. They reject any proposal to relocate the Music Room's functions

to the proposed cellar-level auditorium because the Music Room is a one-of-a-kind space that could not be recreated or memorialized elsewhere.

As discussed herein, the Board has considered all of the evidence in the record and testimony presented—including that of concerned members of the public— but ultimately finds that this application meets applicable requirements and warrants the exercise of discretion to grant.

## I.

The Premises are located on the east side of Fifth Avenue, between East 70th Street and East 71st Street, partially in an R10 zoning district within the Special Park Improvement District and partially in an R8B zoning district within the Limited Height District 1A, in Manhattan. With 201 feet of frontage along Fifth Avenue, 272 feet of frontage along East 70th Street, 275 feet of frontage along East 71st Street, and 55,928 square feet of lot area, the Premises are improved with an existing building with 100,295 square feet of floor area (the "Building").

The Building was originally designed as a single-family residence completed in 1914, was then enlarged to permit its conversion to a house museum with research library (the "Library") by 1935, and has since been expanded to include a subterranean storage vault in 1941, a pavilion and garden in 1977 (the "Pavilion"), and a portico enclosure in 2011.

Located in the Upper East Side Historic District, the Building is an individual landmark designated by the New York City Landmarks Preservation Commission in 1973 and a National Historic Landmark designated by the United States Secretary of the Interior in 2008.

## II.

Years before filing this application, the applicant proposed expanding the Building on a significantly larger scale for the Landmarks Preservation Commission's consideration. In response to neighborhood concerns and taking heed from an alternate design commissioned by the Opposition (entitled a "modest" alternative), the applicant completely redesigned its proposal, which was then approved by the Landmarks Preservation Commission and is reflected in this application.

The applicant proposes to enlarge the Building in the R8B portion of the Premises with a net increase of 11,105 square feet of floor area to 83,000 square feet (2.8 FAR), resulting in a proposed building with a total of 111,400 square feet of floor area (the "Proposed Building"). The Proposed Building would reflect an increased height over the museum from 54'-3" to 68'-2", set back 88'-9" from East 70th Street and 36'-2" from East 71st Street; a southward enlargement of 22'-6" to the library; and an increased height over the Pavilion of 5'-7", set back from the existing street wall by 11'-0". The Proposed Building would also increase lot coverage above the Pavilion from 69.4 percent to 75.8 percent.

The Proposed Building could not be constructed as of right in the Premises' R8B portion because the enlargement exceeds the 60'-0" height limit, increasing the Building's

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degree of noncompliance, *see* Z.R. § 24-591; exceeds lot coverage of 70 percent by exceeding the 23'-0" height exemption over the Pavilion, *see* Z.R. § 24-11; encroaching into the Premises' 3'-0" interior-lot portion, where a 30'-0" rear yard is required, increasing the Building's degree of noncompliance, *see* Z.R. §§ 24-33 and 24-36, as well as increasing the degree of noncompliance for the required rear-yard equivalent on the through lot portion, *see* Z.R. §§ 24-33 and 24-382; and not including either vertical extensions of the street walls above the Pavilion along East 70th Street and above the museum along East 71st Street or 50'-0" minimum setbacks along both streets, *see* Z.R. §§ 23-661 and 23-662.

Accordingly, the applicant requests the relief set forth herein.

### III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21, and the Board acknowledges that the applicant, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

#### A.

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the Building's history of development, its configuration and placement on the Premises, the location of a zoning-district boundary through the Premises, and the historical significance of the Premises—that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

More specifically, the Premises are a designated landmark built before the enactment of the modern Zoning Resolution in 1961. As they stand, the Building and garden—which cannot be disturbed because of their historical significance—are mainly situated within the R10 portion of the Premises. This unique site configuration leaves the Premises' only expansion opportunity within the eastern portion of the Premises—in the R8B portion, where mid-block zoning restrictions severely curtail the Building's enlargement potential. Unlike other locations in the vicinity split between these districts, where the R10 zoning district allows generous development potential while the Premises are severely underbuilt, the Museum's inability to enlarge within the R10 portion of the Premises is curtailed by these unique physical conditions that create practical difficulties

or unnecessary hardship in enlarging the Building in strict conformance with the Zoning Resolution.

Additionally, the applicant notes that the Proposed Building is necessary to accommodate the Museum's programmatic needs. In support of this contention, the applicant furnished a report on the Museum's programmatic needs (the "Programmatic Needs Report") that outlines the Museum's educational program, sets forth the programmatic deficiencies it faces in the Building, details how the Proposed Building would alleviate these deficiencies, and explains how alternate design solutions would not accommodate the Museum's program.

The Museum's program focuses on the following six areas to support its mission: art exhibitions, education, research, art conservation, public access, and administration.

First, the Museum displays artworks from its permanent collection and special exhibitions, which is inhibited by the Building's configuration. The Museum's permanent collection encompasses more than 1,400 artworks—more than twice its original size. Similarly, the Museum's special-exhibitions program has seen sizable growth and increased ambition and complexity. Notwithstanding these needs, the Building only allows sufficient gallery space to exhibit 30–40 percent of the Museum's permanent collection at any given time. Special exhibitions' increased complexity has also forced them into two of the Building's subterranean spaces, divorced in space and tone from the permanent collection and the Building's domestic interiors. The low ceiling heights of these subterranean spaces further limits the Museum's ability to display large-scale works and requires removal of permanent-collection works from public view while special exhibitions are on display in the Building's larger first-floor galleries. Furthermore, as reflected in circulation plans, the Building's support spaces severely restrict the Museum's receiving and handling of artworks because the support spaces' small sizes relegates them to handling one artwork at time, and the Building only provides low-ceilinged, circuitous connections between the cellar levels and elevators to the upper-level galleries.

Second, the Museum's educational program has expanded and partners with schools, colleges, and academic organizations to provide education in support of these degree-granting institutions, though these programs face challenges from the Building's layout. Its education program includes art dialogues, gallery conversations, seminars, salon evenings, lectures, gallery talks, docent talks, drawing programs, symposia, and enrichment sessions. In 2018 alone, the Museum's educational programs served 27,000 attendees. Notwithstanding its breadth, the Museum's educational program needs dedicated spaces for courses and workshops for researchers and members of the public. Despite these educational needs, the Building does not allow dedicated spaces for students and educators to gather or allow the Museum to make all its educational programs accessible to people with disabilities. The Building's existing spaces used for education are also in high-demand, and frequently face occupancy restrictions by

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virtue of balancing the Museum's competing needs for public programs, administrative support, and visitor needs. The Museum's fellowship program similarly hosts advanced doctoral student residencies with the Museum, but the Building does not afford them adequate space for their research.

Third, the Museum's reference library was completed in 1934 and has been constricted by the Building's current configuration. With continued expansion, today it is world-renowned for its current collection of 400,000 books, 100,000 auction catalogues, 1.2 million photographic reproductions, and 4,000 linear feet of archives. Of these holdings, 25 percent are unique to the Museum—not found in any other collection—in the world's largest network of online library catalogs. Though these holdings have expanded significantly, the Building's reference library has not kept pace, relegating many materials to off-site storage and lacking adequate space for technology and digitization projects. Space constraints have also scattered the Museum's book-and-paper conservation programs to stacks and corridors on different floors, some in the cellar. The Building's layout also has the unintended effect of concealing the Museum's reference library from the public, while it is also inaccessible to people with disabilities.

Fourth, the Museum devotes itself to art conservation, with a staff responsible for the preservation of the permanent collection and the Building's historic interiors, though the Building only allows severely constrained spaces for these key functions. Consistent with contemporary conservation practices, this program needs access to adequate light, running water, modern technology (including X-ray equipment), and sufficient space to treat large-scale objects in the Museum's permanent collection. Despite the centrality of this program to the Museum's role as a steward of art and history, the Building provides only 300 square feet for multiple staff members in its conservation studio and relegates work on large-scale artworks to the cellar—contrary to practices that require treating objects in the same setting to reduce damage risk.

Fifth, a central component of the Museum's mission is providing access to the public, though the Building reflects dated expectations. Since 1935, attendance has expanded from 131,000 to nearly 300,000, and modern expectations for public spaces include additional amenities and mandate inclusion and accessibility for people with disabilities. Despite this increased attendance, the Building has not kept pace in space and lacks modern amenities or any meaningful access for people with disabilities.

Sixth, the Museum requires sufficient workspace for staff, which the Building does not provide. The Museum's education and curatorial departments have expanded from 5 positions to 22 positions today. Although the Museum's success and increased programming have spurred institutional growth, the Building does not provide sufficient administrative support spaces for these personnel.

The Programmatic Needs Report further demonstrates that the Proposed Building would accommodate the six elements of the Museum's program on a modest scale.

First, with respect to art exhibitions, the Proposed Building would include new galleries on the second floor within the original residence's private quarters that would enable the display of small-scale works from the permanent collection that are currently in storage. The public would also experience increased access to the original residence and areas that have been inaccessible since 1935, and exhibition space would increase from 19,000 to 23,700 square feet. The Proposed Building would also incorporate a new special-exhibition gallery, allowing the integration of these exhibitions with the permanent collection and increasing special-exhibition space from 1,000 to 1,900 square feet.

Second, with respect to education, the Proposed Building includes a new 500-square-foot education hall along with a public education office and support spaces. The Proposed Building's library would also include a 1,000-square-foot classroom to be used for lectures, seminars, and school-visit orientations and would repurpose dedicated spaces on the second floor for workshops and seminars related to a digital art-history laboratory. In the cellar, the Proposed Building would feature an enlarged lecture hall that expands from 146 seats to 220 seats to meet increased demand for the Museum's lectures, symposia, and musical performances. The Proposed Building also would open the Museum's education programs to individuals with disabilities, including those with mobility impairments and those that benefit from multi-sensory learning experiences.

Third, with respect to the Museum's reference library, the Proposed Building would provide dedicated space for book-and-paper-conservation functions and a digital laboratory, which are comparable in size and function to those of peer institutions.

Fourth, with respect to art conservation, the Proposed Building would relocate that function to a 1,500-square-foot space with higher ceilings and natural light that would accommodate equipment, allow ventilation with exhaust systems, and provide flexibility to treat larger-scale works. This conservation space's placement also provides key adjacencies, including access to an art-specific elevator. The Proposed Building also addresses the Museum's needs for art receiving and handling by enlarging receiving and preparation spaces, locating these spaces next to the primary art entrance in the cellar, and providing an unimpeded connection from these cellar spaces to galleries and the conservation studio.

Fifth, with respect to public access, the Proposed Building expands reception areas from 2,000 square feet to 4,000 square feet, including a museum shop, upper lobby, and café, and improves visitor circulation. The proposed design would also support the Museum's mission to serve the public by providing accessible elevators for people with disabilities and allowing direct access to the permanent collection on the ground floor.

Sixth, with respect to administration, the Proposed Building would provide office space consistent with modern design standards and that would accommodate the Museum's staff. The redesign of these spaces would also

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allow greater efficiency, and their relocation accommodates the Museum's art-exhibition program by repurposing previously publicly inaccessible offices into intimate public galleries.

Lastly, the Programmatic Needs Report shows that alternative designs—including an as-of-right enlargement and alternate designs proffered by the Opposition—would not accommodate the Museum's program.

An as-of-right enlargement was provided permitting the addition of only 4,720 square feet of floor area on the second and third floors above the Museum's music room that would be used for an art conservation studio and offices as well as one floor added south of the Library for a classroom. While significant interior renovations would also be performed in the as-of-right scenario, the Museum's program could not be accommodated in the existing building interior alone. Although 4,700 square feet of new gallery space could be added, it would leave much of the Museum's permanent collection in storage. The art conservation studio could only be 650 square feet, which would be significantly less than the 1,500 square feet needed, and the art service elevator could only stop at the first floor, requiring three elevators to transfer art from the cellar to the third floor and passing through public spaces on the ground floor. Additional visitor spaces and amenities could not be provided, and a new elevator for people with disabilities would result in a reduction in usable space on upper floors for the book-and-paper conservation studio, digital laboratory, and library administration.

The alternate design submitted by the Opposition would increase excavation below the original house and gardens to place more museum, library, and amenities underground, but this proposal would not accommodate the Museum's program. Unlike the Proposed Building, this alternate design would intersperse circulation paths between visitors, art, and other functions—in some instances overlapping the circulation of art with food and impeding circulation for visitors with disabilities. On the first floor, the special-exhibition galleries would sit directly in the visitor circulation path, impeding a new second entrance along East 71st Street by eliminating visitor circulation between the museum and library portions of the Existing Building. The proposed second floor would limit access to second-floor galleries, would decrease the size of the Library's digital art-history laboratory, would not take into account structural elements, and would decrease administrative office space, despite the Museum's increase in staff. On the third floor, the Opposition's alternate design for the Library would no longer accommodate computer stations or scanners for public use, and no apparent provision is made for archive staff areas, which must be located near the reading room and stacks. The art conservation studio, which must be secured, would also eliminate connection between the museum and library portions of the Existing Building. The art conservation studio on the sixth floor would not accommodate the Museum's program because of the proposed location in windowless spaces without access to natural light or

adequate ceiling heights, and interspersing the Library's stack in far-flung locations throughout the Existing Building would impede the Library's research functions.

The next alternate design submitted by the Opposition purports to better address the Museum's program by increasing excavation and maintaining the Music Room; however, it would not. On the first floor, the special-exhibition gallery's L-shape would result in ineffective sightlines, the Music Room, which is circular in plan, would be inefficient for special exhibitions with its curved walls, and the elimination of a classroom in the education area eliminates its crucial adjacency to the East 71st Street entrance and permanent galleries—splintering the Museum's education program from a single suite into spaces split across the first and second floors. The second floor ignores the Building's structural system and would unduly reduce the size of the digital art-history laboratory and its usable space by creating an irregular configuration, thus reducing its public-programming utility. The third floor would eliminate restricted access between the conservation studio, registrar, and elevator and would reduce public-facing programs, including computer stations and scanners, from the reference library. The proposed fourth, fifth, and sixth floors would require the total demolition of existing structural systems to remove an entire floor, unnecessarily adding to the length of construction—a concern for others in the Opposition—resulting in windowless office and conservation spaces with inadequate ceiling heights for conservation equipment and operations. The seventh floor converts a room commissioned in 1935 for use as an office and currently serving as a meeting room to a staff pantry, which would require significant alterations.

Ultimately, these alternate designs proffered by the Opposition neither reflect the structural intricacies of the Building nor do they adequately accommodate the Museum's program, as alleged.

Accordingly, the Board finds that the above unique physical conditions and the Museum's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

## **B.**

Because the Museum is a non-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

## **C.**

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of residential and community-facility land uses and a vibrant retail corridor to the east.

With respect to the built environment, the record reflects that all of the existing buildings east of the Premises

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on the subject block exceed the 60-foot height limit, ranging from 64 feet to 95 feet in height—consistent with the height of the Proposed Building, which proposes less than 70 feet over the Museum Building and maintains the 109-foot height of the Library. Notably, south of the Premises, are residential buildings ranging from 156 to 167 feet in height along East 70th Street. The Proposed Building’s street-wall configurations also preserve neighborhood character by preserving the Building’s distinctive façades and maintaining the Building’s low-scale street walls and existing composition.

Similarly, the current configuration of the Premises is mostly improved on its eastern portion, where the Building would be enlarged by modestly increasing lot coverage—while maintaining the character of the western portion of the Premises—and enclosing an existing egress stair in the rear yard area. These configurations maintain the Premises’ existing historic garden on the west side of the property and preserve existing lot-line windows for an adjacent residence along East 70th Street.

The Proposed Building has also been designed to preserve a garden along East 70th Street, the destruction of which was an area of concern for members of the public when originally proposed to the Landmarks Preservation Commission. Instead, the applicant would restore this garden to its original configuration with appropriate materials and planting that would allow a modern irrigation system while maintaining the existing garden walls.

While the Board is cognizant of its authority to consider the public welfare in this application and is sympathetic to the concerns expressed regarding the Music Room, the provisions of the Zoning Resolution sought to be varied pertain to the exterior massing of the Proposed Building. The Zoning Resolution does not prevent the applicant from demolishing the entire interior of the Building, and it would not be proper to order otherwise at the expense of the Museum’s program. At the Opposition’s behest, the applicant has already redesigned the Proposed Building from the original design considered by the Landmarks Preservation Commission, which would have preserved the Music Room at the expense of other historic features, like the garden, and here it would not be reasonable to require the preservation of one room of lesser significance to trammel the preservation of the Premises’ more significant historic features when doing so would also eviscerate any accommodation to the Museum’s program.

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

#### **D.**

The applicant notes that the above unique physical conditions, including the layout of the Building and arrangement of the Premises, present practical difficulties or unnecessary hardship. This situation was not created by the Museum or a predecessor in title, given that the Building

was constructed years before the current zoning regulations became applicable. Additionally, any modifications to the Building require approval by the Landmarks Preservation Commission, which strictly limits the applicant’s autonomy with respect to site configuration.

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

#### **E.**

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right enlargement would not meet the Museum’s programmatic needs because, among other things, it would not provide sufficient gallery space for public display of the Museum’s permanent collection, would not address the Building’s deficiencies with respect to space for art conservation or adequate circulation, and would provide limited educational space that would in turn impede other elements of the Museum’s program, like accessibility for people with disabilities. Furthermore, none of the Opposition’s alternate designs would address the Museum’s programmatic needs, and, as reflected in comparing the original design before the Landmarks Preservation Commission and the applicant’s proposal here, the Proposed Building already reflects a significant reduction in the scale of the Museum’s expansion plans.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

#### **IV.**

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA053M (March 11, 2020).

The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction.

#### ***Shadows***

The Department of Parks and Recreation represents in correspondence dated June 3, 2019, that the proposed action would not result in any potential for significant adverse impacts with respect to shadows.

The Landmarks Preservation Commission represents by correspondence dated March 13, 2020, that the proposed project would not result in any potential for significant adverse impacts with respect to shadows.

#### ***Historic and Cultural Resources***

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The Landmarks Preservation Commission represents by correspondence dated March 14, 2019, that there are no archaeological concerns.

The Landmarks Preservation Commission states in correspondence dated July 23, 2019, that the Premises are listed on the State and National Register and are a National Historic Landmark.

The New York State Office of Parks, Recreation, and Historic Preservation states in a letter dated August 26, 2019, that the listing of a building on the State–National Registers and designation of a National Historic Landmark covers the entire building, including exteriors and interiors without distinction.

In response to the Opposition’s concerns that further review of the potential for significant impact on historic resources pursuant to CEQR of the Proposed Building’s renovation and in particular the proposed removal of the Music Room was indicated, the Board requested additional information—including photographic documentation, historic architectural drawings, background materials, and written explanation—by correspondence dated November 27, 2019. Among its comments, the Board sought clarification about alterations to interior spaces, including: how demolition of parts of the 1935 renovation would retain the historic resource’s characteristic elements; how the proposed modifications would continue the Premises’ history of salvage, dismantling, relocation, and reuse of historic architectural materials in the house since its original construction in 1914; how proposed modifications relate to renovations to the 1914 house that facilitated the 1935 house museum’s circulation patterns and exhibition spaces (including demolition of the original porte-cochère and the home office, relocation of the entry façade, relocation of the fireplace and Boucher Room, removal of second-floor bathrooms and partition walls, and demolition of the original library); specific descriptions of interior spaces, including the Music Room, taking into account its current configuration, materials, conditions, original use, and current use; how the proposed cellar-level auditorium would address concerns about the Music Room as an intimate, salon-like performance venue; addressing the impact of time and usage of space on the historical significance of the individual portions of the building in relation to the project; details about materials from the Music Room proposed to be salvaged and reused; clarification as to how removal and relocation of the Music Room’s functions would not upset 1935 visitor circulation or its architectural function as a domed, conceptual “hinge” linking gallery spaces to the library; and how proposed floor plans visually relate to 1914–1935 conditions in terms of areas to be retained, restored, replaced, or removed.

The Board requested further clarification by correspondence dated December 30, 2019, including: documentation of the Music Room’s concerts and programming as a whole; explanation about the feasibility of locating special-exhibition galleries on the second floor; explanation of why the Music Room could not be improved in situ with installation of acoustic enhancements; and

discussion of how the Music Room’s intimacy will be achieved in the proposed cellar-level auditorium.

The Landmarks Preservation Commission states by correspondence dated January 24, 2020, that the applicant should provide additional information. First, there must be more clarity on the chronology and alterations to the Building and its interiors and be more explicit in identifying areas of primary versus secondary importance, important spatial relations, and character-defining architectural features of the Building as a National Historic Landmark. Second, using National Park Service Preservation Brief No. 18, there must be more clarity as to whether the Music Room is of secondary importance in use and in relation to other significant public spaces within the Building. Third, the National Historic Landmark nomination notes the significance of the Museum’s “careful choices [during renovations and expansions] over time that uphold the residential character while still embracing institutional evolution.” This must be considered in analyzing the proposed removal of the Music Room, which should include salvage of historic decorative, architectural, and operational elements that cannot be preserved in place from the Music Room’s interior and reintroduced on site. Fourth, there must be clarity on whether the proposed project would retain the Museum’s most dominant or primary features such that the integrity of the Premises’ 1912–1935 period of significance would be maintained to an extent that warrants its continued eligibility as a National Historic Landmark and inclusion on the National Register. Fifth, more information is necessary regarding the repurposing of the second-floor rooms from office space to public exhibition spaces and its relation to the Premises’ significance. Lastly, there must be more clarity about whether some or all of the physical and experiential characteristics of the Music Room will be maintained in the proposed cellar-level auditorium.

The Landmarks Preservation Commission commented on further revisions in correspondence dated February 18, 2020. First, discussion of the Landmarks Preservation Commission’s declining to designate certain interiors of the Building as an interior landmark should be removed or clarified as background rather than justifying any analysis of primary and secondary spaces. Second, discussion of primary spaces should be limited to the Premises’ 1912–1935 period of significance, reference to the Landmarks Preservation Commission’s approval of a Certificate of Appropriateness is not pertinent to the analysis. Lastly, more background information must be included to justify the application of National Park Service Preservation Brief No. 18.

The Landmarks Preservation Commission represents by correspondence dated February 20, 2020, that the proposed project would not result in any potential for significant adverse impacts on historic or cultural resources.

The Landmarks Preservation Commission in correspondence dated February 21, 2020, further commented that the draft environmental assessment statement should be amended to clarify that the family bedrooms and sitting rooms as described in the Historic



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Resources chapter are primary spaces. In correspondence dated February 24, 2020, the Landmarks Preservation Commission states the revised chapter addressed their comments and is acceptable.

The proposed drawings provide: “As described in the EAS, Attachment D: Historic and Cultural Resources, the architectural salvage and documentation measures, including Historic American Building Survey (HABS) quality drawings and photographs, will be implemented.” and that a “Construction Protection Plan will be submitted to the Landmarks Preservation Commission for review prior to the start of construction.”

### ***Hazardous Materials***

The Department of Environmental Protection states in its letter dated January 2, 2019, that the November 2018 Environmental Site Assessment Work Plan and Health and Safety Plan are acceptable. Upon completion of the investigation activities, the applicant must submit a detailed Phase II report for the Department of Environmental Protection’s review and approval, which must include, at a minimum, an executive summary, a narrative of field activities, laboratory data and conclusions, comparison of soil, groundwater, soil vapor, and outdoor air analytical results, updated site plans depicting sample locations, boring logs, and remedial recommendations, if warranted.

The Department of Environmental Protection states in its letter dated April 25, 2019, that it finds the March 2019 Remedial Action Plan and Construction Health and Safety Plan acceptable as long as the proposed vapor barrier system is used, unless otherwise approved by the Department of Environmental Protection, and at project completion a professional-engineer-certified Remedial Closure Report is to be submitted to the Department of Environmental Protection for review and approval. The report should indicate that all remedial requirements have been properly implemented (including installation of the Preprufe 300R Plus (46-mil) and Preprufe 160R Plus (32-mil) waterproofing layer/vapor barrier, transportation–disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations, and two feet of Department of Environmental Protection-approved certified clean fill–top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt).

The proposed drawings provide: “As required in the April 25, 2019 letter from NYC Department of Environmental Protection (“DEP”), a vapor barrier shall be installed unless an amendment is approved by DEP, and a Remedial Closure Report certified by a Professional Engineer shall be submitted to DEP upon completion of the project.”

### ***Transportation***

The Department of Transportation states in a letter dated June 28, 2019, that the applicant must perform Level 1 (Trip Generation) and Level 2 (Trip Assignments) screening assessments to determine if a detailed transportation analysis is warranted and provide all appropriate backup material and travel demand assumptions

and factors; perform Level 1 (Trip Generation) and Level 2 (Trip Assignments) screening assessments to determine if a detailed transportation analysis is warranted to show how the temporary relocation during construction could potentially affect traffic-and-pedestrian operations near the relocated site; remove Census Tract 143 (Central Park) from the analysis because its land use is significantly different from the surrounding area and proposed land use; include construction worker vehicle trips by taxi-mode choice in the analysis; provide the temporal parking distribution for construction workers and the parking utilization rates for the surrounding on- and off-street parking used to determine the project’s effect on nearby parking; and perform a Level 2 transportation screening of construction-worker vehicle trips to show that no congested intersection would experience a sizable increase in traffic.

The Department of Transportation states in a letter dated September 5, 2019, that a detailed traffic-and-pedestrian analysis is not warranted for the operational component because the proposed action is not anticipated to generate additional vehicular and pedestrian traffic when the expansion would only serve to enhance current operations by replacing inefficiently sized, overcrowded spaces with larger workspaces.

### ***Air Quality***

To avoid the potential for significant adverse air-quality impacts related to the proposed project’s heating and hot water systems an (E) designation for air quality will be placed on the project site. The (E) designation states that: Any new development on Block 1385 Lot 1 must utilize only natural gas in any fossil fuel-fired heating and hot water equipment and be fitted with low NOx (30 ppm) burners.

The Department of Environmental Protection states in its letter dated January 8, 2019, that, with respect to air quality, the applicant must provide a scaled roof map showing the modeled stack location and an explanation as to why the roof gardens at 15 East 70th Street and the air intakes on the roof of 14 East 71st Street, 22 East 71st Street, and 18 East 71st Street were not considered as receptors. The applicant was further required to assess air quality impacts related to the art preparation and conservation studios’ process emissions (noting that restoration and conservation processes differ from chemical laboratories), address potential recirculation issues for the restoration–conservation studios’ exhausts of the fume hood collocated on the roof with other air intakes, and check the AERMOD input values.

The Department of Environmental Protection states in its letter dated March 29, 2019, that the proposed project would not result in any potential for significant adverse impacts with respect to air quality.

The proposed drawings provide: “As stated in the EAS, Attachment G: Air Quality, an (E) Designation (E-571) for air quality is applied to the project site.”

### ***Noise***

The Department of Environmental Protection states in its letter dated January 8, 2019, that, with respect to noise,

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the applicant was required to provide evidence that school events did not affect noise measurements, to provide copies of noise meter log data and field-noise measurement sheets, and to include the 28-dBA west façade noise attenuation.

The Department of Environmental Protection states in its letter dated March 29, 2019, that the proposed project would not result in any potential for significant adverse impacts with respect to noise so long as the project incorporates a composite window-wall noise attenuation of 28 dBA for the Fifth Avenue frontage of the Proposed Building in order to attain an indoor noise level of 45 dBA and incorporates an alternate means of ventilation to ensure that a closed-window condition is maintained.

The proposed drawings provide: “As required in the March 29, 2019 letter from DEP, a composite window/wall attenuation of 28 dBA is required for the Fifth Avenue frontage of the proposed addition. To ensure that closed window condition is maintained, an alternate means of ventilation is required (and will be incorporated into the building design and construction). As required by the EAS (19BSA053M) dated March 10, 2020, commercial, office, meeting and administration spaces on the Fifth Avenue frontage would require a composite window/wall attenuation of 23 dBA.”

### *Construction*

The Department of City Planning states in correspondence dated June 20, 2019, that the proposed action’s construction would not result in any significant adverse impacts with respect to land use, zoning, and public policy, neighborhood character, community facilities, or socioeconomic conditions.

The Department of Transportation states in correspondence dated September 5, 2019, that as the Level 1 (Project Trip Generation) Screening Assessment indicates that the proposed project would generate less than 50 construction-related automobile trips during peak hours, a detailed traffic analysis for construction is not warranted.

The Department of Parks and Recreation states in correspondence dated July 2, 2019, that it has no comments or questions about the construction impacts analyses.

The Department of Health states in correspondence dated July 22, 2019, that it has no comments regarding the construction impacts analyses.

The Department of Environmental Protection states in correspondence dated June 25, 2019, that the proposed action would not result in any potential for significant adverse impacts with respect to construction on water and sewer infrastructure.

The Department of Environmental Protection states in correspondence dated June 19, 2019, that the Construction Hazardous Materials Attachment of the EAS should reiterate the management, removal, and disposal of asbestos-containing materials (ACM), lead-based paint (LBP), suspected polychlorinated biphenyls (PCB)-containing equipment and compliance with applicable regulatory requirements for demolition or renovation of the building; and that the RAP and CHASP summary should include dust control, contingency measures in case

underground storage tanks or soil contamination is encountered, dewatering (if necessary), and capping with clean fill for landscaped/uncapped areas.

The Department of Environmental Protection provided comments on the hazardous materials section of the draft environmental assessment statement construction chapter by correspondence dated July 19, 2019, which states that it has no further comments on the hazardous materials chapter.

The Department of Environmental Protection represents in correspondence dated September 5, 2019, that the proposed action would not result in any potential for significant adverse impacts with respect to hazardous materials for construction.

The Department of Environmental Protection states in a letter dated June 28, 2019, that, with respect to construction, the applicant must provide a construction-stages description based on the construction-schedule timeline (including the construction activities, duration, and locations associated with each stage); a complete list of construction equipment, the equipment schedule, their sizes, corresponding activities, and usage factors; and details of construction fences, including material, location, and height. With respect to noise, the applicant must provide the following: details of the analysis (including the number and type of equipment operating on site, the amount of construction-related vehicular traffic, and a map showing equipment locations) and explanations of which construction activities were analyzed; reference materials and calculations for construction equipment noise emission levels, noting that some equipment (jackhammers, concrete saws, and bobcat) are not included; explanation of the noise reductions taken in the noise analysis for assumptions, noting that data is site specific; backup materials (scaled map showing specified receptors and calculations in the form of a spreadsheet for the construction noise levels during various construction activities); explanation of why the lowest ambient noise levels during construction hours (7:00 a.m. to 6:00 p.m.) were not used to estimate potential construction impacts; and application of the construction noise reduction measure to all construction equipment.

The Department of Environmental Protection states in a letter dated August 12, 2019, that, with respect to noise, the applicant must provide the reference materials and calculations to confirm the project-specific noise emission levels shown; if those noise levels are implemented in the modeling, the path controls (portable noise barriers, enclosures, acoustical panels, or curtains) must be included as a project commitment; otherwise, if those levels are for reference, they should be removed. The applicant must also provide information from the East New York Rezoning for comparison (including equipment type, number of equipment, duration of use daily, usage factor, noise level, and shortest distance to receptor); construction noise reduction measures, the noise shielding provided, and its shielding parameters for each construction stage; discussion of the intensity of construction noise, its duration from on-site sources and impact determination for noise receptors located at 4 East 70th Street and 10 East 70th Street; and an

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explanation of the impact distances between the construction sites located on the East 70th Street garden and library-extension construction and the closest noise receptors (western façade at 11 East 70th Street and southern façade at 14 East 71st Street, which share a common lot line with the proposed project) since the impact distances seem unrealistic.

The Department of Environmental Protection states in a letter dated September 16, 2019, with respect to noise, change the “pile installation activities” to “foundation activities.” Furthermore, the following noise reduction measures should be included as project commitments noting that, if these measures are not implemented, the noise impact could be significant: the concrete operation equipment shielded from the structures with three sides and roof, and the noise barriers will shield upper floors of the adjacent receptors. Regarding the on-site construction analysis results: confirm and describe the alternative means of the ventilation for receptors #1, #10, and #11 to take credits for the window-wall attenuation. Confirm the description of the maximum Leq(L) noise levels in the “Intensity of Construction Noise” section for all receptors. For example, for receptor #1, the reported noise level is in the lower 70th, not high 60s dBA. Provide more discussion to demonstrate that the construction noise impact at receptor #7 is not significant. As presented, the incremental impact at this residential receptor include 5 months at 15.3 dBA and 9 months at 7.7 dBA. During the months of the maximum impact, the interior noise levels exceeded the 45-dBA threshold by 13 dBA. Note that, based on noise analysis results, estimated construction noise levels would exceed CEQR Technical Manual construction noise screening thresholds at some receptors and would produce total noise in the “marginally unacceptable” exposure levels. Additionally, construction would not result in any significant adverse stationary or mobile source air quality impacts when the proposed project implements an emissions-reduction program that includes: ULSD fuel and best available tailpipe reduction technologies; diesel equipment reduction; utilization of newer equipment; dust control measures required by the New York City Air Pollution Control Code; and on-site idling restriction.

The Department of Environmental Protection states in a letter dated September 26, 2019, that with noise control measures identified and proposed, construction noise at adjacent and non-adjacent residential receptors located on East 70th Street and East 71st Street, between Fifth Avenue and Madison Avenue, would be expected to elevate to “marginally unacceptable” range, which would be noticeable and potentially intrusive; however, these construction noise levels would be transient, temporary, and would not rise to the level of a significant adverse noise impact. Construction noise at residential receptors located on East 70th Street and East 71st Street between Fifth Avenue and Madison Avenue that are directly adjacent to construction areas, would be expected to elevate up to “clearly unacceptable” range at times during the most noise-intensive construction activities, and that noise would at

times be readily noticeable and intrusive, However, construction noise levels would be transient, temporary, and would not rise to the level of a significant adverse impact. Construction noise at residential receptors along Fifth Avenue and Madison Avenue, between East 70th Street and East 71st Street, may be noticeable at times but would be temporary and would not rise to the level of a significant adverse noise impact. Additionally, construction would not result in any significant adverse stationary or mobile source air quality impacts when the proposed project implements an emissions-reduction program that includes: ULSD fuel and best available tailpipe reduction technologies; diesel equipment reduction; utilization of newer equipment; dust control measures required by the New York City Air Pollution Control Code; and on-site idling restriction.

In response to the Opposition’s concerns, the Board asked the applicant for clarification of the information found in the analyses. The applicant added more explanatory language to the noise section of the construction chapter of the draft environmental assessment statement and submitted a technical memo to further address concerns regarding construction noise.

The Department of Environmental Protection states in correspondence dated March 10, 2020, that it has no further comments.

The proposed drawings provide: “All applicable standards and regulations regarding infrastructure connections during construction shall be followed. . . . As required in the September 26, 2019 letter from DEP, the traffic and noise control measures and emission reduction program measures described in Attachment I: Construction in the EAS shall be implemented. A Construction Protection Plan will be submitted to the Landmarks Preservation Commission for review prior to the start of construction. All applicable standards and regulations regarding infrastructure connections during construction shall be followed.”

\* \* \* \* \*

Ultimately, as the Board explained before its vote, the Board has taken a hard look at all areas of potential environmental concern, as documented in the Final Environmental Assessment Statement. Its review has incorporated concerns raised by the Opposition relating to the effect of the proposed action on historic and cultural resources (including the Music Room and other interior spaces) and potential construction impacts on sensitive receptors (including noise and air quality). Over the course of its review, the Board requested additional information, clarification, and documentation from the applicant and sought input from other agencies on their fields of expertise.

With respect to the potential for significant adverse environmental effects related to historic and cultural resources, the Board has analyzed the effects the proposed project would have on the Building’s interior using appropriate technical standards. Cognizant of arguments in favor of the Music Room’s preservation in place and its removal, the Board notes that, while the Music Room is part of the 1934 renovation and falls within the 1912–1935 period of significance, the National Register report is silent

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as to the Music Room's architectural significance. Notably, comments from the Opposition and the public in favor of preservation of the Music Room have focused on the music programming—not on the Music Room's quality as an architectural form, as belonging to a long or important architectural past, or embellished with noteworthy architectural finishes (as compared to those finishes seen throughout other parts of the 1935 expansions or in exhibition spaces). Instead, the Music Room's primary importance to the Opposition relates to its use for music performances. However, use of the space and guarantee of the Museum's continued music programming is not subject to regulation under the Board's environmental review or its zoning authority, even were the Music Room to remain unaltered. Additionally, considering the Music Room's relation to circulation, the Museum's visitors do not encounter the Music Room as part of the sequence of spaces devoted to gallery viewing. The 1934 expansion and conversion from the 1914 residence into a house museum also included significant demolition work, including removal of the original porte-cochère and library, and relocation of the Boucher Room in the interest of creating an enhanced museum experience. Consistent with that tradition, the project as proposed would similarly enhance the Museum's spatial sequences and exhibition experience. Consequently, on balance the Board has concluded that the proposed project would not have a potential for significant adverse effects on the historic or cultural resource as a whole.

With respect to the potential for significant adverse environmental effects related to construction, after extensive consideration by the Department of Environmental Protection and by the Board, the proposed project incorporates the implementation of standard Noise Code-required protocols and additional protocols specified by the Department of Environmental Protection following its review, and both the Department of Environmental Protection and the Board have concluded that noise levels for the proposed project would be typical of construction projects of this scale.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

## V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. § 72-21 to *permit*—partially in an R10 zoning

district within the Special Park Improvement District and partially in an R8B zoning district within the Limited Height District 1A—the enlargement of an existing landmarked building used as a museum and library that would not comply with zoning regulations for height (Z.R. § 24-591), lot coverage (Z.R. § 24-11), rear yards (Z.R. §§ 24-33 and 24-36), street-wall location and setback (Z.R. §§ 23-661 and 23-662), and rear-yard equivalent (Z.R. §§ 24-33 and 24-382); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received March 11, 2020”—Thirty-three (33) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum building height of 109'-2", maximum lot coverage of 75.8 percent, no rear yard or rear-yard equivalent, and street-wall location and setbacks below 55 feet, as illustrated on the Board-approved drawings;

THAT the proposed vapor barrier system is installed, unless an amendment is approved by the Department of Environmental Protection;

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 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.);

THAT a composite window-wall attenuation of 28 dBA is required for the Fifth Avenue frontage of the proposed addition;

THAT an alternate means of ventilation is required and should be incorporated into building design and construction to maintain a closed window condition;

THAT commercial, office, meeting, and administration spaces on the Fifth Avenue frontage would require a composite window-wall attenuation of 23 dBA;

THAT traffic and noise control measures and emission reduction program measures described in Attachment I: Construction, of the Final Environmental Assessment Statement shall be implemented including those mentioned below;

THAT the air quality emission control measures will be taken to reduce pollutant emissions during construction in accordance with all applicable laws, regulations and building codes which includes: the use of clean fuel, ultra-low sulfur diesel (ULSD) fuel will be used exclusively for all diesel engines throughout the construction site; diesel equipment reduction measures that involve the use of electrically powered equipment such as welders and saws to be used over diesel-powered versions of that equipment, to the extent feasible; dust control measures including a dust control plan and watering program to be required as part of contract specifications; idling restrictions as required by local law; best available tailpipe reduction technologies, utilization of newer equipment for all diesel powered non-road construction equipment to meet EPA's Tier 1 through

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4 standards for emission criteria;

THAT noise control measures will be taken to reduce impacts to nearby receptors which includes meeting the requirements of the New York City Noise Control Code, and the DEP Notice of Adoption of Rules for Citywide Construction Noise Mitigation which mandate that specific construction equipment and motor vehicles meet specific noise emission standards; that construction be limited to weekdays between the hours of 7:00 AM and 6:00 PM, and that weekend and after hour work permits be obtained as required; that construction materials be handled and transported in such a manner as not to create unnecessary noise; a site-specific noise mitigation plan for the proposed project will be developed and implemented as required under the New York City Noise Control Code;

THAT noise source control measures would be implemented that include: equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code and Table 22-1 of the CEQR Technical Manual, electrically powered equipment such as welders and saws to be used over diesel-powered versions of that equipment to the extent feasible; the construction site will be configured to minimize back-up alarm noise where feasible, and trucks will not be allowed to idle more than 3 minutes at the construction site in accordance with Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code; and contractors and subcontractors will be required to properly maintain their equipment and mufflers;

THAT noise path controls will be implemented that include: noisy equipment such as cranes, concrete pumps, concrete trucks, and delivery trucks, to be located away and shielded from sensitive receptor locations where logistics allow; that during superstructure construction, concrete operations would be shielded from sensitive receptor locations through means of protective enclosures with three sides and a roof; that noise barriers at least 12 feet tall be constructed from plywood or other materials surrounding the construction site will be utilized to provide shielding, including a cantilever towards construction work to shield upper floors of adjacent receptors and where logistics allow, truck deliveries would take place behind these barriers; and path control measures such as portable noise barriers, panels, enclosures, and acoustical tents would be required for dominant noise equipment such as generators, compressors, and pumps to the extent feasible;

THAT vibration monitoring will be required in accordance with the procedures of DOB TPPN #10/88 regulations for applicable nearby receptors;

THAT a Construction Protection Plan will be submitted to the Landmarks Preservation Commission for review prior to the start of construction;

THAT all applicable standards and regulations regarding infrastructure connections during construction shall be followed;

THAT as described in the Final Environmental Assessment Statement, Attachment D: Historic and Cultural Resources, the architectural salvage and documentation

measures, including Historic American Building Survey (HABS) quality drawings and photographs, will be implemented;

THAT an (E) designation (E-571) is placed on the site for air quality related to the proposed project's heating and hot water systems;

THAT the above conditions shall appear 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-571);

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-171-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 11, 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, March 17, 2020.

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## **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 June 29, 2020, at 10 A.M., for continued hearing.

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## **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**

# MINUTES

**ACTION OF THE BOARD** – Laid over to June 29, 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.

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784, Lot 44, Borough of Brooklyn.

### COMMUNITY BOARD #17BK

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 4, 2020, at 10 A.M., for decision, hearing closed.

## 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 46<sup>th</sup> Road, Block 48, Lot 8, Borough of Queens.

### COMMUNITY BOARD #2Q

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 15, 2020, at 10 A.M., for decision, hearing closed.

## 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 26<sup>th</sup> Street, Block 775, Lot 64, Borough of Manhattan.

### COMMUNITY BOARD #4M

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 4, 2020, at 10 A.M., for decision, hearing closed.

## 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

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 18, 2020, at 10 A.M., for decision, hearing closed.

## 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 July 13, 2020, 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

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 1, 2020, at 10 A.M., for decision, hearing closed.

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# MINUTES

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## 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 14<sup>th</sup> Street, Block 7373, Lot 78, 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 June 1, 2020, at 10 A.M., for decision, hearing closed.

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## 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 95<sup>th</sup> Street, Block 1106, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

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 1, 2020, at 10 A.M., for decision, hearing closed.

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## 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 24<sup>th</sup> Street, Block 7659, Lot 61, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 4,

2020, at 10 A.M., for decision, hearing closed.

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## 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

**ACTION OF THE BOARD** – Laid over to June 15, 2020, at 10 A.M., for continued hearing.

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## 2019-165-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Zev Brachfield, owner.

SUBJECT – Application June 3, 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); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1375 East 26<sup>th</sup> Street, Block 7662, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to June 15, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 105, No. 13

April 3, 2020

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## DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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Tuesday, March 24, 2020**

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**Affecting Calendar Numbers:**

2017-216-BZ	411 Wales Avenue, Bronx
2017-202-A	43 Cunard Avenue, Staten Island
2017-310-A	10002 Farragut Road, Brooklyn
2019-29-BZ	30 Clinton Avenue, Brooklyn

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# DOCKETS

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New Case Filed Up to March 24, 2020  
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**2020-23-BZ**

28-07 Jackson Avenue, Block 00420, Lot(s) 1, Borough of **Queens, Community Board: 2.** Special Permit (§73-36) to permit the operation of a physical cultural establishment (Performance Lab) to be located on a portion of the first floor and cellar of an existing building contrary to ZR §42-10. M1-6/R10 Special Long Island City Mixed Use District. M1-6/R10 district.  
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**2020-24-A**

39-35 27th Street, Block 00397, Lot(s) 2, Borough of **Queens, 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/R5B district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING APRIL 21, 2020, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 21, 2020, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### SPECIAL ORDERED CALENDAR

#### 121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> Street Realty Corp, owner; Spa Osaka, Inc., lessee.  
SUBJECT – Application January 11, 2018 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment (*Osaka Health Spa*) on the third floor and mezzanine level of a six-story mixed used building, contrary to ZR §32-10, which expired on February 6, 2016; Waiver of the Rules. C6-4.5 Midtown Special District.  
PREMISES AFFECTED – 37 West 46<sup>th</sup> Street, Block 1262, Lot 20, Borough of Manhattan.  
**COMMUNITY BOARD # 5M**

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### APPEALS CALENDAR

#### 2019-195-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CAM LLC, owner.  
SUBJECT – Application July 22, 2019 – Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District.  
PREMISES AFFECTED – 191 Industrial Loop, Block 7206, Lot 299, Borough of Staten Island.  
**COMMUNITY BOARD #3SI**

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## REGULAR MEETING APRIL 21, 2020, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 21, 2020, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### ZONING CALENDAR

#### 2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.  
SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.  
PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.  
**COMMUNITY BOARD #8BX**

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#### 2019-202-BZ

APPLICANT – Eric Palatnik, P.C., for Jack Aini, owner.  
SUBJECT – Application August 7, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 Special Ocean Parkway District.  
PREMISES AFFECTED – 2218 East 3<sup>rd</sup> Street, Block 7129, Lot 31, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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#### 2019-272-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Layla Associates, owner; Sweat 440, lessee.  
SUBJECT – Application October 7, 2019 – 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.  
PREMISES AFFECTED – 600 6<sup>th</sup> Avenue (aka 63 W. 17<sup>th</sup> Street), Block 819, Lot 7502, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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#### 2019-296-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2374 Concourse Associates, LLC & 101 E. Burnside Partners LLC, owners; Acqua Ancien Bath New York LLC, lessee.  
SUBJECT – Application November 26, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Aire Ancient Baths*) contrary to ZR §32-10. C6-2A zoning district. Tribeca East Historic District.

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# CALENDAR

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

**COMMUNITY BOARD #1M**

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**2019-297-BZ**

APPLICANT – Pryor Cashman LLP, for Thor Fifth Avenue  
LLC, owner; Konnectgolf LLC, lessee.

SUBJECT – Application November 26, 2019 – 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.

PREMISES AFFECTED – 588 Fifth Avenue, Block 1263,  
Lot 38, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 24, 2020  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, pursuant to Z.R. §§ 73-01 and 73-03, for an amendment of a special permit, previously granted by the Board, pursuant to Z.R. § 73-19, which permitted the operation of a school.

A public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, with continued hearings on January 28, 2020, and March 17, 2020, and then to decision on March 24, 2020. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood.

The Premises are bounded by Wales Avenue to the east, St. Mary’s Street to the south, Concord Avenue to the west, and 144th Street to the north, in an M1-2 zoning district, in the Bronx. The Premises have approximately 263 feet of frontage along Wales Avenue, 100 feet of frontage along St. Mary’s Street, 63 feet of frontage along Concord Avenue, 200 feet of frontage along East 144th Street, 32,496 square feet of lot area, and are occupied by an existing two-story, plus cellar, building occupied as a school.

The Board has exercised jurisdiction over the Premises, then comprised of tax lots 82 and 79, since April 17, 2018, when, under the subject calendar number, the

Board granted a special permit, pursuant to Z.R. § 73-19, to permit the operation of a school on condition that all work, site conditions, and operations conform to drawings filed with the application; the second floor, until occupied by Neighborhood Charter School: Bronx, only be occupied by a middle school or high school; drop off times for school buses only be from 7:00 a.m. to 7:35 a.m. and pickup times for school buses only be from 3:50 p.m. to 4:15 p.m.; intersection mitigation measures be implemented as follows: at the intersection of Wales Avenue and Saint Mary’s Street, there be a crossing guard to correspond with peak arrival and departure hours, there be, to the extent deemed appropriate by the Department of Transportation (“DOT”), two stop signs to control vehicles on Wales Avenue and there be an enhanced crosswalk painted on the northern leg of the intersections; at the intersection of Wales Avenue and East 144th Street, there be a cross guard employed to correspond with peak arrival and departure hours; at the intersection of Concord Avenue and East 144th Street, there be a crossing guard employed, there be, to the extent deemed appropriate by the Department of Transportation, two stop signs to control vehicles traveling on East 144th Street and an enhanced crosswalk on the eastern leg of the intersection; monitoring of level of service occur prior to occupancy of building and include other monitoring as required by the Department of Transportation as follows: the applicant perform a follow-up traffic and pedestrian monitoring plan within six months of the School’s opening and within six months of full occupancy to verify the travel demand assumptions used to project pedestrian and vehicular trips, assess pedestrian safety and circulation and recommend improvement measures, if warranted; the applicant submit for DOT’s review and approval a scope-of-work for the traffic monitoring plan including travel demand and mode choice surveys, pedestrian and traffic data collection and analysis and a signal warrant analysis, if warranted; that data collection include 24-hour automatic traffic recorder counts, manual turning movement counts, vehicular classification counts, pedestrian counts including at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal-timing and field observations including queue lengths; the applicant conduct pedestrian and vehicular levels-of-service analyses and safety assessment and identify improvement measures, if warranted; the applicant be responsible for all costs associated with the monitoring plan as well as any subsequent measures requiring capital improvements including traffic signals and curb extensions; the applicant submit all of the required drawings as per the American Association of State Highway and Transportation Officials (“AASHTO”) and DOT specifications and requirements for DOT review and approval; DOT participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases; sub-slab, vapor-barrier and closed-window conditions be implemented as required by the Office of Environmental Remediation in accordance with (E) designation requirements; the conditions appear on the

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# MINUTES

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certificate of occupancy; a certificate of occupancy be obtained within four years, by April 17, 2022; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The applicant does not propose any changes to the previously approved plans but seeks an amendment to modify a condition of the Board's grant (that the second floor only be occupied by a middle school or high school) to allow an elementary school to occupy the second floor. Specifically, under the previous application, the applicant anticipated an incubator school that would serve middle- and high-school students only. However, as school enrollment grew, the applicant now seeks to host a school incubation program on the second-floor level for schools requiring short-term space prior to relocation and identified a tenant (DREAM Mott Haven charter school ("DREAM")) that hosts elementary school students.

Over the course of hearings, the Board raised concerns with regard to the finding of Z.R. § 73-19(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," given the proposed change to the school's program. Specifically, the Board questioned whether this finding continues to be met, given the addition of elementary school-aged students changed the student-generated traffic and pedestrian projections, and requested that a revised transportation demand analysis and technical memorandum be forwarded to DOT for review. In response, the applicant provided a revised technical memorandum to demonstrate that the student population and grade enrollment under the proposed incubation schedule will remain consistent with previously approved conditions, with a total of 620 students and 102 faculty members projected in the 2026–2027 school year.

By correspondence dated October 25, 2019, the New York City Office of Environmental Remediation states that the Remedial Action Report for the Premises is approved, and the Notice of Completion (NOC) may be issued. By correspondence dated March 16, 2020, the DOT states that they reviewed and concur with their findings contained in the technical memorandum and travel demand assumptions memorandum.

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 April 17, 2018, so that as amended this portion of the resolution shall read: "to *permit* the second floor of the school to be used as an incubation program for elementary school-aged children; *on condition* that all work and site conditions shall

conform to drawings filed with this application:

THAT drop off times for school buses shall only be from 7:00 a.m. to 7:35 a.m. and pickup times for school buses shall only be from 3:50 p.m. to 4:15 p.m.;

THAT intersection mitigation measures shall be implemented as follows: at the intersection of Wales Avenue and Saint Mary's Street, there shall be a crossing guard to correspond with peak arrival and departure hours, there shall be, to the extent deemed appropriate by the Department of Transportation, two stop signs to control vehicles on Wales Avenue and there shall be an enhanced crosswalk painted on the northern leg of the intersections; at the intersection of Wales Avenue and East 144th Street, there shall be a cross guard employed to correspond with peak arrival and departure hours; at the intersection of Concord Avenue and East 144th Street, there shall be a crossing guard employed, there shall be, to the extent deemed appropriate by the Department of Transportation, two stop signs to control vehicles traveling on East 144th Street and an enhanced crosswalk on the eastern leg of the intersection;

THAT monitoring of level of service shall occur prior to occupancy of building and shall include other monitoring as required by the Department of Transportation as follows: the applicant shall perform a follow-up traffic and pedestrian monitoring plan within six (6) months of the School's opening and within six (6) months of full occupancy to verify the travel demand assumptions used to project pedestrian and vehicular trips, assess pedestrian safety and circulation and recommend improvement measures, if warranted; that the applicant shall submit for DOT's review and approval a scope-of-work for the traffic monitoring plan including travel demand and mode choice surveys, pedestrian and traffic data collection and analysis and a signal warrant analysis, if warranted; that data collection shall include 24-hour automatic traffic recorder counts, manual turning movement counts, vehicular classification counts, pedestrian counts including at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal timing and field observations including queue lengths; that the applicant shall conduct pedestrian and vehicular levels-of-service analyses and safety assessment and identify improvement measures, if warranted; that the applicant shall be responsible for all costs associated with the monitoring plan as well as any subsequent measures requiring capital improvements including traffic signals and curb extensions; that the applicant shall submit all of the required drawings as per AASHTO and DOT specifications and requirements for DOT review and approval; that DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases;

THAT sub-slab, vapor-barrier and closed-window conditions shall be maintained as required by the Office of Environmental Remediation in accordance with (E) designation requirements;

THAT all conditions from prior resolutions not

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# MINUTES

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specifically waived by the Board remain in effect;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2017-216-BZ”), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 24, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, March 24, 2020.

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## 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

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, March 24, 2020.

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### 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** – Application withdrawn without prejudice.

THE VOTE –

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 24, 2020.

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## ZONING 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

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, March 24, 2020.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 105, Nos. 14-15

April 17, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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# DOCKETS

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**2020-25-BZ**

142-30 13th Avenue, Block 04435, Lot(s) 27, Borough of **Queens, Community Board: 7**. Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district. R1-2 district.  
-----

**2020-26-BZ**

30 West 21st Street, Block 00822, Lot(s) 58, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (The Fort) to be located on a portion of the cellar of an existing building contrary to ZR §22-10. C6-4A Ladies Mile Historic District. C6-4A district.  
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**2020-27-BZ**

403 Concord Avenue, Block 02573, Lot(s) 87, Borough of **Bronx, Community Board: 8**. Special Permit (§73-19) to permit the operation of a High School (UG 3) contrary to ZR 42-10. M1-2 zoning district. M1-2 district.  
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**2020-28-BZ**

845 White Plains Road, Block 03645, Lot(s) 1, Borough of **Bronx, Community Board: 9**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (LA Fitness) to be located on a portion of the first-floor existing building contrary to ZR §32-10. C4-1 zoning district. C4-1 district.  
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**2020-29-BZ**

146-65 Springfield Boulevard, Block 13363, Lot(s) 6, Borough of **Queens, Community Board: 13**. Variance (§72-21) to permit the enlargement of a UG 16 & 6 warehouse and office building previously before the Board contrary to ZR 22-00. R3-1 and R3-2 zoning districts. R3-1 & R3-2 district.  
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**2020-30-BZ**

37-40 31st Street, Block 00372, Lot(s) 35, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (CrossFit Dutch Kills) to be located on a portion of the first-floor and mezzanine of an existing building contrary to ZR §42-10. M1-2 Special Long Island City Mixed Use District. M1-2/R6A district.  
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**2020-31-BZ**

100 Williams Street, Block 00068, Lot(s) 36, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Orangetheory Fitness) to be located on a portion of the first floor of an existing building contrary to ZR §32-10. C6-5 Special Lower Manhattan Purpose District. C5-5 LM district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING MAY 4-5, 2020, 10:00 A.M. & 2:00 P.M.

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, May 4, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday, May 5, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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### SPECIAL ORDER CALENDAR

#### 551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.  
PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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#### 334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.  
SUBJECT – Application August 23, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 24, 2019. R1-2 zoning district.  
PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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#### 72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.  
SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.  
PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.  
**COMMUNITY BOARD #7Q**

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#### 51-06-BZ

APPLICANT – Sheldon Lobel, P.C. for Rivoli Realty Corp., owner  
SUBJECT – Application January 16, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a dance studio (UG 9) and a physical cultural establishment (*Push Fitness Club*) which expired on December 12, 2016; Amendment to permit a

change in hours of operation for the PCE; Waiver of the Board's Rules of Practice and Procedure. C1-2R2A zoning district.

PREMISES AFFECTED – 188-02 Union Turnpike, Block 7266, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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### ZONING CALENDAR

#### 2019-84-BZ

APPLICANT – Akerman LLP, for 107-18 Realty Associates, owner; FIT4U, LLC, lessee.

SUBJECT – Application May 1, 2019 – 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.  
PREMISES AFFECTED – 107-18 70<sup>th</sup> Road, Block 3239, Lot 38, Borough of Queens.

**COMMUNITY BOARD #6Q**

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#### 2019-265-BZ & 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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#### 2019-273-BZ

APPLICANT – Law Office of Jay Goldstein, for Magnum Real Estate Group, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application October 8, 2019 – 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.  
PREMISES AFFECTED – 139-146 West Street (90-110 Barclay Street, 88-110 Vesey Street, 206-222 Washington St), Block 84, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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# CALENDAR

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**2019-306-BZ**

APPLICANT – Law Office of Jay Goldstein, for Betty Kaufman Weisberger Trust FBO Robert E Kaufman, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application December 20, 2019 – 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.

PREMISES AFFECTED – 49 West 23<sup>rd</sup> Street, Block 825, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Margery Perlmutter, Chair/Commissioner*

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
APRIL 6-7, 2020, 10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**551-37-BZ**

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to May 4-5, 2020, at 10 A.M., for postponed hearing.

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**334-78-BZ**

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

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

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to May 4-5, 2020, at 10 A.M., for postponed hearing.

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**115-94-BZ**

APPLICANT – Sheldon Lobel, P.C., for Irma Poretsky, 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**

**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M., for continued hearing.

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**122-95-BZ**

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

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

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

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M., for continued hearing.

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**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 29-30, 2020, at 10 A.M., for continued hearing.

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**72-04-BZ**

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to May 4-5, 2020, at 10 A.M., for postponed hearing.

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**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

# MINUTES

7362, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to June 15-16, 2020, at 10 A.M., for continued 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 21<sup>st</sup> Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to August 3-4, 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 23<sup>rd</sup> Street, Block 7658, Lot 58, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to August 3-4, 2020, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 2018-35-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Richmond County Construction and Development Corp., owner.

SUBJECT – Application March 5, 2018 – Variance of the 2014 Building Code to permit the change in use and corresponding alteration of an existing building contrary to §28-101.4.1 to §28-101.4.4 of the building code. M-1 zoning district.

PREMISES AFFECTED – 22 Van Street, Block 187, Lot 152, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application dismissed.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of a Department of Buildings deputy borough commissioner, dated April 9, 2019, acting on Alteration Application No. 520307686, reads in pertinent part: “For use group B the walls shall not be less than 2-hour fire-resistance rated where separating buildings of Type II or V construction. Therefore, the proposed conversion for change of use of any building has Construction Classification or structure 4: wood frame from residential use to commercial use is not permitted and contrary to BC 706.4. The proposed conversion for change in use of any building has Construction Classification or structure 4: wood frame (type VB) is not permitted in a fire district and contrary to BC 503 Table 503.”

This is an administrative appeal seeking a variance to the New York City Building Code to allow the conversion of a building from residential occupancy to commercial occupancy.

A public hearing was held on this application on April 7, 2020, after due notice by publication in *The City Record*, and then to decision on the same date. Commissioner Scibetta performed inspections of the site and surrounding neighborhood.

The Premises are located on the west side of Van Street, south of Richmond Terrace, in an M1-1 zoning district. They have approximately 116 feet of frontage on Van Street, a depth of 87 feet, a lot area of 10,051 square feet, and are improved with two buildings: a one-story warehouse used for the storage of automotive parts and a three-story, frame residential building.

The applicant proposes to convert the building from residential occupancy to commercial occupancy without complying with the New York City Building Code—a proposal that requires a rigorous review of applicable building-code and fire-safety standards.

At hearing, the Board discussed the incompleteness of this application. In contravention of the Board’s Rules, the applicant filed this application without a final agency

# MINUTES

determination, rendering this application premature. See 2 Rules of the City of New York §§ 1-06.2(a) and 1-06.3(a).

In particular, the final determination “must be signed by the agency commissioner” or “may also be signed by the Deputy Commissioner or, acting under a written delegation of power from the Commissioner, any Borough Commissioner of the Department of Buildings.” 2 RCNY § 1-06.3(a). Instead, the above decision is signed by a deputy borough commissioner.

The applicant explicitly acknowledged that this requirement applies to this application (which is classified as an appeal to a final agency determination) but expressed no ability to cure this deficiency, even though this application was filed years ago.

Notably, the applicant has also filed an application with the Department of Buildings for identical relief, which is pending and might serve as a basis for a future application to the Board (assuming the request is denied by a duly authorized official within the Department of Buildings).

Lastly, the Department of Buildings also appeared at hearing, confirming its own position that the Board’s consideration of this application would be premature in light of the applicant’s request with the Department of Buildings, which is still pending.

Accordingly, given the highly technical review that will occur during the Department of Buildings’ review of the applicant’s pending variance request, the Board finds it appropriate to dismiss this application—though nothing herein shall be read as preventing the applicant from appealing a properly signed final determination to the Board in the future.

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

Adopted by the Board of Standards and Appeals, April 7, 2020.

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## 2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M., for postponed hearing.

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## ZONING CALENDAR

### 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

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 15-16, 2020, at 10 A.M., for decision, hearing closed.

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### 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 August 3-4, 2020, at 10 A.M., for continued hearing.

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### 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 July 13-14, 2020, at 10 A.M., for continued hearing.

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# MINUTES

## 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

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 1-2, 2020, at 10 A.M., for decision, hearing closed.

## 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 28<sup>th</sup> Street, Block 8791, Lot 120, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to July 20-21, 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 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 June 1-2, 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to May 18-19, 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 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to May 18-19, 2020, at 10 A.M., for continued hearing.

## REGULAR MEETING MONDAY-TUESDAY AFTERNOON APRIL 6-7, 2020, 2:00 P.M.

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

## 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 54<sup>th</sup> Street aka 5401 3<sup>rd</sup> Avenue, Block 822, Lot 11, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –



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# MINUTES

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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 18,  
2020, at 10 A.M., for decision, hearing closed.

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## **2018-142-BZ**

APPLICANT – Dennis P. George, owner.  
SUBJECT – Application August 29, 2018 – Variance (§72-  
21) to permit the development of a two-story plus attic &  
cellar Use Group (“UG”) 2 residential building contrary to  
ZR §§22-00 (Zero Lot line building) & § 32-461a (Side  
Yard less than minimum required). R3-1 zoning district.  
PREMISES AFFECTED – 204-23 46<sup>th</sup> Road, Block 7304,  
Lot 53, Borough of Queens.

### **COMMUNITY BOARD #19Q**

**ACTION OF THE BOARD** – Laid over to June 15-  
16, 2020, at 10 A.M., for continued hearing.

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## **2019-187-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for  
Bricktown Pass LLC, owner; Furie Spa Inc., lessee.  
SUBJECT – Application July 3, 2019 – 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.

PREMISES AFFECTED – 205 Bricktown Way, Block  
7452, Lot 100, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to June 1-2,  
2020, at 10 A.M., for continued hearing.

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## **2019-205-BZ**

APPLICANT – Goldman Harris LLC, for Jean’s Place  
Housing Development Fund Corporation, owner.  
SUBJECT – Application August 16, 2019 – Variance (§72-  
21) to permit the development of a 9-story residential  
building with 129 units of affordable independent residences  
for seniors contrary to ZR §42-10. M1-1 zoning district.  
PREMISES AFFECTED – 485 Van Sinderen Avenue,  
Block 3799, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to June 29-  
30, 2020, at 10 A.M., for continued hearing.

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## **2020-2-BZ**

APPLICANT – Law Office of Emily Simons PLLC, for  
LDR Realty Corp., owner.

SUBJECT – Application January 8, 2020 – Special Permit  
(§73-53) to allow the enlargement of an existing non-  
conforming manufacturing building, contrary to use  
regulations (§22-00). R6B zoning district.

PREMISES AFFECTED – 318-320 54<sup>th</sup> Street (aka 5401 3<sup>rd</sup>  
Avenue) Block 822, Lot 11, Borough of Brooklyn.

### **COMMUNITY BOARD #7BK**

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 18-  
19, 2020, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 16-17

May 1, 2020

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## DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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10-08-BZ	86-68 Bradhurst Avenue, aka 303 West 145 <sup>th</sup> Street, Manhattan
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2019-296-BZ	84-84 Franklin Street, Manhattan
2019-297-BZ	588 Fifth Avenue, Manhattan

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# DOCKETS

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New Case Filed Up to April 20-21, 2020

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**2020-32-BZ**

58 North 9th Street, Block 02309, Lot(s) 1202, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (BKBX Williamsburg) to be located within the cellar, basement and first floor of an existing building contrary to ZR §42-10. M1-2/R6A (MX-8) zoning district. M1-2/R6A MX-8 district.

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**2020-33-BZ**

437 88th Street, Block 06050, Lot(s) 45, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts. C8-2/C4-2A BR district.

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**2020-34-A**

45 John Street, Block 00078, Lot(s) 28, Borough of **Manhattan, Community Board: 1**. Application requesting a variance of the Multiple Dwelling Law to existing HACA multiple dwelling to be partially converted to a hotel. An existing inner court supplying legal light and air to apartments does not meet the size requirements for hotels. C6-4 Lower Manhattan Special Purpose District. C6-4 LM district.

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**2020-35-BZ**

136-18 Maple Avenue, Block 05135, Lot(s) 3, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C1-2/R6 and R6 zoning district. C1-2/R6 and R6 district.

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

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# MINUTES

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## REGULAR MEETING

**MAY 18-19, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, May 18, 2020 and Tuesday May 19, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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**SPECIAL ORDER CALENDAR**

**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**

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**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**

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**2018-190-A**

APPLICANT – Richard Lobel, P.C., for 18 Union St. LLC, owner.

SUBJECT – Application November 26, 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 R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district.

PREMISES AFFECTED – 32-18 Union Street, Block 4954, Lot 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

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## ZONING CALENDAR

**2019-263-BZ**

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Richmond.

**COMMUNITY BOARD #2SI**

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**2019-266-BZ**

APPLICANT – Law Office of Steven Simicich, for 1492 & 1498 Clove Road, LLC, owner.

SUBJECT – Application September 18, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3X LDGMA zoning district.

PREMISES AFFECTED – 1498 Clove Road, Block 661, Lot 19, Borough of State Island.

**COMMUNITY BOARD #1SI**

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**2020-27-BZ**

APPLICANT – Sheldon Lobel, P.C. for Civic Concord Avenue LLC, owner.

SUBJECT – Application March 27, 2020 – 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 R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district.

PREMISES AFFECTED – 403 Concord Avenue, Block 02573, Lot 87, Bronx.

**COMMUNITY BOARD #8BX**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

## REGULAR MEETING MONDAY-TUESDAY MORNING APRIL 20-21, 2020, 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 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

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

#### 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 – 76-36 164<sup>th</sup> Street, Block 6848, Lot 1, Borough of Queens.

#### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over August 10-11, 2020, at 10 A.M., for continued hearing.

#### 322-98-BZ

APPLICANT – Law Office of Fredrick A. Becker for HUSA Management Co., LLC, owner; TSI Harlem USA LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (New York Sports Club) which expired on March 23, 2019 Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125<sup>th</sup> Street, Block 1951, Lot 22, Borough of Manhattan.

#### COMMUNITY BOARD #10M

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

#### 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Langston Retail LLC, owner; TSI West 145 LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) to allow the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on December 1, 2017; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules. C4-4D zoning district.

PREMISES AFFECTED – 86-68 Bradhurst Avenue aka 303 West 145<sup>th</sup> Street, Block 2045, Lot 7501, Borough of Manhattan.

#### COMMUNITY BOARD #10M

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

#### 121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> Street Realty Corp, owner; Spa Osaka, Inc., lessee.

SUBJECT – Application January 11, 2018 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment (*Osaka Health Spa*) on the third floor and mezzanine level of a six-story mixed used building, contrary to ZR §32-10, which expired on February 6, 2016; Waiver of the Rules. C6-4.5 Midtown Special District.

PREMISES AFFECTED – 37 West 46<sup>th</sup> Street, Block 1262, Lot 20, Borough of Manhattan.

#### COMMUNITY BOARD # 5M

# MINUTES

**ACTION OF THE BOARD** – Laid over June 29-30, 2020, at 10 A.M., for continued hearing.  
-----

## **62-15-BZ**

APPLICANT – Glen V. Cutrona, AIA, for 139 Bay Street Point, LLC, owner.

SUBJECT – Application December 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a residential conversion and enlargement of a two-story commercial building which expires on January 12, 2020.

PREMISES AFFECTED – 139 Bay Street, Block 1, Lot(s) 10, 17, 198, 19, 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 April 27-28, 2020, at 10 A.M., for decision, hearing closed.  
-----

## **APPEALS CALENDAR**

### **2017-16-A thru 2017-19-A**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over June 29-30, 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 04699, Lot 22, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over June 29-30, 2020, at 10 A.M., for continued hearing.  
-----

### **2018-201-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Elbi Cespedes, lessee.

SUBJECT – Application December 28, 2018 – 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. PREMISES AFFECTED – 46 Kissel Avenue, Block 0078, Lot 0021, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over June 29-30, 2020, at 10 A.M., for continued hearing.  
-----

### **2018-30-A**

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

## **COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Laid over August 3-4, 2020, at 10 A.M., for postponed hearing.  
-----

### **2019-195-A**

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

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

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

## **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over June 15-16, 2020, at 10 A.M., for continued hearing.  
-----

## **ZONING CALENDAR**

### **2017-21-BZ**

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38<sup>th</sup> Street, Block 645, Lot

# MINUTES

10, Borough of Queens.

## COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over August 10-11, 2020, at 10 A.M., for adjourned hearing.

## 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 June 29-30, 2020, at 10 A.M., for adjourned 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 39<sup>th</sup> Street, Block 894, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #6M

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 15-16, 2020, at 10 A.M., for decision, hearing closed.

## 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 August 3-4, 2020, at 10 A.M., for adjourned hearing.

## 2019-76-BZ

APPLICANT – Law Office of Lyra J. Altman, for Danny Mita, owner.

SUBJECT – Application April 19, 2019 – 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.

PREMISES AFFECTED – 1973 East 16<sup>th</sup> Street, Block 7295, Lot 58, 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 June 1-2, 2020, at 10 A.M., for decision, hearing closed.

## 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

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 13-14, 2020, at 10 A.M., for decision, hearing closed.

## 2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

## COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over June 1-2, 2020, at 10 A.M., for adjourned hearing.



# MINUTES

## 2019-268-BZ

APPLICANT – Sheldon Lobel, P.C., for 1937 Coney Island LLC, owner.

SUBJECT – Application September 23, 2019 – 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.

PREMISES AFFECTED – 1938 Coney Island Avenue, Block 6617, Lot 0045, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over August 10-11, 2020, at 10 A.M., for continued hearing.

## 2019-271-BZ

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless c/o Amato Law Group, PLLC, for 3708 Hylan Boulevard Corp., owner.

SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, Block 5190, Lot 85, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over August 10-11, 2020, at 10 A.M., for continued hearing.

## REGULAR MEETING MONDAY-TUESDAY AFTERNOON APRIL 20-21, 2020, 2:00 P.M.

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

## ZONING CALENDAR

### 2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over July 20-21, 2020, at 10 A.M., for postponed hearing.

### 2019-202-BZ

APPLICANT – Eric Palatnik, P.C., for Jack Aini, owner.  
SUBJECT – Application August 7, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2218 East 3<sup>rd</sup> Street, Block 7129, Lot 31, 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 June 1-2, 2020, at 10 A.M., for decision, hearing closed.

### 2019-272-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Layla Associates, owner; Sweat 440, lessee.

SUBJECT – Application October 7, 2019 – 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.

PREMISES AFFECTED – 600 6<sup>th</sup> Avenue (aka 63 W. 17<sup>th</sup> Street), Block 819, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

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# MINUTES

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Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 1-2, 2020, at 10 A.M., for decision, hearing closed.

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## **2019-296-BZ**

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

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

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

### **COMMUNITY BOARD #1M**

**ACTION OF THE BOARD** – Laid over June 15-16, 2020, at 10 A.M., for continued hearing.

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## **2019-297-BZ**

APPLICANT – Pryor Cashman LLP, for Thor Fifth Avenue LLC, owner; Konnectgolf LLC, lessee.

SUBJECT – Application November 26, 2019 – 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.

PREMISES AFFECTED – 588 Fifth Avenue, Block 1263, Lot 38, 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 April 27-28, 2020, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, No. 18

May 8, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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*Commissioners*

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Monday-Tuesday, April 27-28, 2020**

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**Affecting Calendar Numbers:**

429-29-BZ	4801 Kings Highway, Brooklyn
322-98-BZ	300 West 125 <sup>th</sup> Street, Manhattan
10-08-BZ	86-68 Bradhurst Avenue, aka 303 West 145 <sup>th</sup> Street, Manhattan
62-15-BZ	139 Bay Street, Staten Island
201-297-BZ	588 Fifth Avenue, Manhattan

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# DOCKETS

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New Case Filed Up to April 27-28, 2020  
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**2020-36-BZ**

8401 Flatlands Avenue, Block 08005, Lot(s) 6, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-211) to permit the operation of an automotive service station (UG 16B), service station with an automotive repair and accessory convenience store contrary to ZR §32-10. R5D/C2-3 zoning district. C2-3/R5D district.  
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**2020-37-BZ**

217 Seventh Avenue, Block 00798, Lot(s) 7502, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (Mind Body Project) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-3X, R8A.C2-5 and C6-3A zoning districts. C6-3X, R8A.C2-5 and C6-3A district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**JUNE 1-2, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, June 1, 2020 and Tuesday June 2, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 58-30-BZ

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens

**COMMUNITY BOARD #4Q**

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### 10-99-BZ

APPLICANT – Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC dba New York Sports Club, lessee.

SUBJECT – Application November 20, 2019 – 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 October 26, 2019. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, Block 2705, Lot 135, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### 33-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RCPI Landmark Properties LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application November 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expired on January 11, 2020. C5-2.5 and C5-3 Midtown Special Purpose district. Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 630 5<sup>th</sup> Avenue aka 40-60 Rockefeller Plaza, 31-41 W. 50<sup>th</sup> Street, 32-40 W. 51<sup>st</sup> Street, Block 1266, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for PGREF/1633 Broadway Tower, L.P., owner; Equinox 50<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expires on January 11, 2020. C6-7 Midtown Special Purpose District.

PREMISES AFFECTED – 1633 Broadway, Block 1022, Lot 43, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

## REGULAR MEETING MONDAY-TUESDAY MORNING APRIL 27-28, 2020, 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 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** – Application granted on condition.

#### THE VOTE –

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

#### THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 13, 2018, acting on Alteration Type I Application No. 321796419, reads in pertinent part:

“ZR 52-42: BSA approval required for enlargement of building with non-conforming use. Amend prior variance;

ZR 22-00: Existing C/O shows first floor use as gasoline service station, lubricatorium, sales and storage and accessory use only. BSA approval required for addition of accessory convenience store and drive-through.”

This is an application for an amendment of a variance, pursuant to Z.R. § 11-412, previously granted by the Board, to permit a change in configuration of the existing gasoline pumps, the addition of a canopy above the reconfigured gasoline pumps, and conversion and enlargement from an accessory lubricatorium to an accessory convenience store and drive-through window.

A public hearing was held on this application on November 18, 2018, after due notice by publication in *The City Record*, with continued hearings on March 26, 2019, May 21, 2019, January 28, 2020, April 20, 2020, and then to decision on April 28, 2020.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 18, Brooklyn, recommends approval of this application subject to the following conditions: the accessory convenience store and drive-through window hours of operation be limited to 6:00 a.m. to 12:00 a.m.; the entrance/exit on East 48th Street be eliminated; and, a ten-foot wall be erected on East 48th Street with landscaping to buffer the sound and pollution. The Board also received two form letters in support of this application, and one form letter in objection to this application citing concerns over the potential for unwanted traffic caused by the amendment.

The Premises are bounded by Kings Highway to the east, Avenue H to the south, and East 48th Street to the west, in an R4 zoning district, in Brooklyn. With approximately 96 feet of frontage along Kings Highway, 42 feet of frontage along Avenue H, 174 feet of frontage along East 48th Street, 15,473 square feet of lot area, the Premises are occupied by an existing one-story automotive repair building and accessory office with 1,947 square feet of floor area and six gasoline pumps.

The Board has exercised jurisdiction over the Premises since March 18, 1930, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station on condition that a concrete curb cut not less than 12 inches in height be installed along the building line of the three street frontages; there be no portable gasoline pumps maintained or operated on the Premises; there be no more than two driveways from the Kings Highway frontage, not exceeding a width of ten feet each, with a curb cut directly in front of same; there be no vehicular opening on the Avenue H frontage; any crankcase service, if conducted on the Premises, be housed in a roofed enclosure of approved masonry; the one-story building as indicated for office and shelter of the operators and patrons of the Premises be finished on the exterior with light-colored cement stucco or finished face brick with roof of peaked design with tile of Spanish type or variegated slate; the exterior of any other structure erected on the Premises for incidental use be finished on the outside the same as the office building; all advertising be restricted to the illuminated glass globes of the pumps or flat wall signs on the frieze of either structure erected on the Premises; all permits required be obtained within six months; and, any work involved be completed within one year, by March 18, 1931.

On October 28, 1930, under the subject calendar number, the Board amended the resolution to permit modifications on further condition that all permits required be obtained within six months and any work involved be completed within one year, by October 28, 1931.

On June 24, 1932, under the subject calendar number, the Board further amended the resolution to permit modifications to the Premises on further condition that there be no more than two driveways from the Kings highway frontage, two on the East 48th Street frontage and one on the Avenue H frontage, not exceeding a width of 12 feet

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each, with a curb cut in front of same not exceeding a width of 14 feet; the nearest driveway to Avenue H on East 48th street not less than 20 feet north of the Avenue H building line; any crankcase service, if conducted on the Premises, be housed in a roofed enclosure of approved masonry; the one-story building as indicated for office and shelter of the operators and patrons of the Premises be finished on the exterior with light-colored cement stucco or finished face brick with roof of peaked design with tile of Spanish type or variegated slate; the exterior of any other structure erected on the Premises for incidental use be finished on the outside the same as the office building; all advertising be restricted to the illuminated glass globes of the pumps or flat wall signs on the frieze of either structure erected on the Premises and one flat, illuminated sign, about six feet by three feet, erected inside the property line advertising the nature of the business conducted on the Premises; all permits required be obtained within six months, and any work involved be completed within one year, by June 24, 1933.

On February 9, 1937, under the subject calendar number, the Board further amended the resolution, as it relates to signage, prohibiting all roof signs and signs of a temporary manner but permitting the erection within the building line, along Kings Highway, of one post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale, provided such sign does not extend beyond the building line for a distance of more than five feet, on further condition that all permits required be obtained within six months, and any work involved be completed within one year, by February 9, 1938.

On April 28, 1953, under the subject calendar number, the Board further amended the resolution to permit a driveway across the adjoining Premises known as Lot 75, which was granted a variance by the BSA under Cal. No. 85-52-BZ, as additional access to the lot.

On November 21, 1961, under the subject calendar number, the Board granted a variance to permit the reconstruction and extension of the existing gasoline service station, lubritorium, sales, storage, and accessory uses, an additional gasoline pump, and relocation of the curb cuts on condition that all work conform to drawings filed with the application, with the exception that the northerly curb cut on East 48th Street be eliminated; all walls of the accessory building be faced with face brick; the milk dispensing machine be removed from the Premises; all laws, rules, and regulations applicable be complied with; and a permit be obtained, work done, and a certificate of occupancy obtained within the requirements of Section 22A of the Zoning Resolution.

On November 20, 1962, November 19, 1963, November 17, 1964, and December 7, 1965, under the subject calendar number, the Board the Board further amended the resolution to extend the time to obtain permits and complete the work for one-year periods, the latter of which on condition that a permit be obtained, work completed and a certificate of occupancy be obtained by December 7, 1966.

The applicant now seeks an amendment to permit a change in configuration of the existing gasoline pumps, the addition of a canopy above the reconfigured gasoline pumps, and conversion and enlargement from an accessory lubritorium to an accessory convenience store with drive-through window. Pursuant to Z.R. § 11-412, the Board may permit the building to be enlarged not in excess of 50 percent of the floor area of such building occupied or utilized by the use on December 15, 1961. The applicant also seeks an amendment to permit an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice (“TPPN”) # 10/99. TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building, and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or 25 percent of the zoning lot area, whichever is less. The applicant represents that existing building contained 1,535 square feet of floor area in 1961. A 50 percent enlargement results in an additional 767.5 square feet of floor area, for a maximum permitted enlargement of 2,302.50 square feet of floor area, and 1,719 square foot building is proposed. Thus, the enlargement is permissible under Z.R. § 11-412. The applicant also submits that the proposed sales area of the accessory convenience store, which will be located on the same zoning lot as the service station and will be contained within a completely enclosed building, contains approximately 646 square feet of sales area and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,890 square feet).

At hearing, the Board discussed that, though this is not an application for a special permit for eating or drinking place with accessory drive-through facilities, *see* Z.R. § 72-243, the design and arrangement of the drive-through window in relation to the convenience store is appropriate in this instance because the Premises are bounded by streets on three of four frontages and are heavily buffered from the adjacent residential lot by 20 feet of dense landscaping.

Over the course of hearings, the Board raised concerns regarding the location and use of curb cuts, the potential for traffic issues, and maneuverability of gasoline delivery tanker trucks about the Premises. In response to concerns, the applicant submitted a traffic study and forwarded the plans to the Department of Transportation (“DOT”) for review of the proposal.

Regarding the curb cuts, by letter dated January 21, 2020, DOT states that the first curb cut is located on the east side of East 48th Street, approximately 48 feet north of the East 48th Street/Avenue H intersection, as measured from the north curb line on Avenue H to the south edge of the curb cut splay. This curb cut is proposed to be 35 feet wide, including 2.5-foot splays, and is proposed to function as a two-way vehicular entry and exit point. The second curb cut is located on the west side of the Kings Highway service



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road, approximately 28 feet north of the Kings Highway/Avenue H intersection, as measured from the north curb line on Avenue H to the south edge of the curb cut splay. This curb cut is proposed to be 67 feet wide, including 2.5-foot splays, and is proposed to function as a two-way vehicular entry and exit point. DOT determined that the two curb cuts described above, and their proposed usage, are not projected to create significant traffic, pedestrian circulation, or safety issues provided that the following conditions are met and maintained prior to and during usage: 1) no additional curb cuts, beyond the two proposed curb cuts described above (one on the east side of East 48th Street and one on the west side of the Kings Highway service road) shall be allowed to serve the subject property; 2) all other existing curb cuts serving the subject property shall be eliminated through construction of full-height curb and sidewalk; this includes the existing 24-foot wide curb cut on Avenue H and portions of the existing curb cuts on East 48th Street and the Kings Highway service road; 3) all tanker truck egress from the subject site shall occur via the Kings Highway service road; a flagger shall be used to help safely accommodate ingress and egress movements for the tanker truck; and, 4) all proposed sidewalk appurtenances (e.g., sign poles, trees, fire hydrants, etc.) shall be located a minimum of seven feet from the outside edge of all curb cut splays. DOT approval of the proposed curb cuts described above is granted provided the conditions listed above are met and maintained during use and operation of the site as a six-pump gas station and a 1,719 square-foot convenience market/coffee shop with a drive-through window. If any one of these conditions above is not met, DOT will coordinate with DOB to revoke approval of the design and location of these curb cuts.

Regarding the gasoline delivery tanker trucks, by correspondence dated February 13, 2020, DOT states that tanker trucks typically deliver fuel during off-peak hours (i.e., overnight and early morning) when vehicular and pedestrian volumes are generally low and the propensity for conflicts between these travel modes is also low. Tanker trucks also make deliveries to each station infrequently—usually, only a few days per week. Given the relative infrequency of conflicts during these limited days and times, most gas stations do not incorporate the use of flaggers to accommodate tanker-truck movements on- and off-site. However, in light of DOT's concern with respect to the proximity of the proposed curb cut to the north crosswalk at Avenue H/Kings Highway, and recognizing the physical design constraints on this relatively small site, DOT suggests that a flagger be utilized during tanker-truck deliveries as a measure to enhance safety for on- and off-site traffic circulation. The applicant's representatives agreed to this suggestion and expressed a willingness to incorporate certified flaggers into their operations. As such, DOT memorialized the use of a flagger as a condition of the curb cut approval. DOT recommends that all gas station employees at the subject site obtain flagger certification in accordance with New York State Department of Transportation guidance, which references flagger training

courses offered from the American Traffic Safety Services Association ("ATSSA"). The flagger certification can be obtained by completing an online four-hour course. There is no prerequisite for taking the course. DOT has no direct enforcement mechanism to ensure that this stipulation will be adhered to by the operator of the gas station. It is the station operator's responsibility to self-enforce and ensure compliance with this condition of DOT's approval. If the operator is found to be in non-compliance, or safety issues arise, the property owner/operator stand in violation of conditions of their curb cut approval and could be subjected to further City actions.

By letter dated January 27, 2020, the Fire Department states that a review of their records indicates that the automotive service station has current permits for the use as a motor vehicle repair shop, storage of combustible liquids, and suppression system. Based on the foregoing, the Department has no objection to the application and will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested 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, adopted March 18, 1930, as amended through December 7, 1965, so that as amended this portion of the resolution shall read: "to *permit* a change in configuration of the existing gasoline pumps, the addition of a canopy above the reconfigured gasoline pumps, and conversion and enlargement from an accessory lubritorium to an accessory convenience store and drive-through window, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 22, 2020"- sixteen (16) sheets; and *on further condition:*

THAT no additional curb cuts, beyond the two proposed curb cuts (one on the east side of East 48th Street and one on the west side of the Kings Highway service road) shall be allowed to serve the subject property;

THAT all other existing curb cuts serving the subject property shall be eliminated through construction of full-height curb and sidewalk;

THAT all tanker truck egress from the subject site shall occur via the Kings Highway service road; flaggers shall be used to help safely accommodate ingress and egress movements for the tanker truck;

THAT all proposed sidewalk appurtenances (e.g., sign poles, trees, fire hydrants, etc.) shall be located a minimum of seven feet from the outside edge of all curb cut splays;

THAT five employees of the subject gasoline service station shall obtain and maintain flagger certification, obtained in accordance with New York State Department of Transportation guidance, which references flagger training courses offered from the American Traffic Safety Services Association ("ATSSA");

THAT a flagger shall be utilized during tanker-truck deliveries as a measure to enhance safety for on- and off-site traffic circulation;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 429-29-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 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;

THAT the Department of Buildings must 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 28, 2020.

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## 322-98-BZ

APPLICANT – Law Office of Fredrick A. Becker for HUSA Management Co., LLC, owner; TSI Harlem USA LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (New York Sports Club) which expired on March 23, 2019 Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125<sup>th</sup> Street, Block 1951, Lot 22, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF BOARD** – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on March 23, 2019, and an amendment to permit a reduction in the square footage of the physical culture establishment (“PCE”).

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2020, and then to decision on April 28, 2020. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 10, Manhattan, recommends approval of this application.

The Premises are bounded by West 125th Street to the north, Frederick Douglass Boulevard to the east, West 124th Street to the south, St. Nicholas Avenue to the west, in a C4-4D zoning district and in the Special 125th Street District, in Manhattan. The site has approximately 250 feet of frontage along West 125th Street, 202 feet of frontage along Frederick Douglass Boulevard, 350 feet of frontage along West 124th Street, 112 feet of frontage along St. Nicholas Avenue, 61,658 square feet of lot area and is occupied by an existing four-story, plus cellar and mezzanine, commercial building.

The Board has exercised jurisdiction over the Premises since March 23, 1999, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a PCE on a portion of the first floor and fourth floor of the 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 term of the special permit be for ten years, commencing March 23, 1999, and expiring March 23, 2009; the Premises remain graffiti free at all times; all signage comply with the Zoning Resolution; 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 year, by March 23, 2000. On February 15, 2005, under the subject calendar number, the Board amended the resolution to permit a 5,343 square-foot expansion of the facility on the fourth floor of the building, in order to allow for the construction of a basketball court as accessory to the PCE, on condition that all work substantially conform to drawings filed with the application; DOB ensure that the enlargement complies with all applicable district bulk 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) and/or configuration(s) not related to the relief granted. On October 19, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term for a period of ten years, from March 23, 2009, to expire on March 23, 2019, and to legalize the enlargement of the PCE at the southwest corner of the fourth floor for an additional workout area, which results in a 600 square foot increase in the floor area of the PCE, for a total floor area of 21,502 square feet, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the

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term of the grant expire on March 23, 2019; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; 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.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. Board's Rule § 1-07.3(b)(2) requires a showing by the applicant that the use has been continuous from the expiration of term through the filing of the application and, absent a waiver of the Board's Rules, substantial prejudice would result. In response, the applicant provided rent invoices for the PCE to continuously cover the period from the expiration of term through the filing of the application and represents that the PCE would incur substantial costs and suffer prejudice should the PCE cease operations at the subject site.

The applicant represents that the PCE continues to operate as "New York Sports Club," with the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., Saturday, 7:00 a.m. to 9:00 p.m., and Sunday, 7:00 a.m. to 7:00 p.m. The applicant seeks an amendment to reflect a change in floor area of the PCE, as the basketball court permitted under the February 15, 2005, approval, and states that the PCE now occupies 15,460 square feet of floor area as follows: 772 square feet of floor area on the first floor, and 14,688 square feet of floor area on the fourth floor.

By letter dated February 29, 2020, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) and fire alarm system that have been tested and inspected by the Bureau of Fire Prevention and their permits are current. The Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated March 23,

1999, as amended through October 19, 2010, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for ten years, expiring March 23, 2029, and to *permit* a reduction in the PCE floor area, *on condition* that all work shall substantially conform to drawings as filed with this application, marked "Received March 12, 2020," six (6) sheets; and *on further condition*:

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 term of the PCE shall be for ten years, expiring on March 23, 2029;

THAT the Premises shall remain graffiti free at all times;

THAT all signage shall comply with the Zoning Resolution;

THAT fire safety measures be maintained as shown on the Board-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 322-98-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 20, 2021;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2020.

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## 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Langston Retail LLC, owner; TSI West 145 LLC dba New York Sports Club, lessee.

SUBJECT – Application September 3, 2019 – Extension of Term of a previously granted Special Permit (§73-36) to allow the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on December 1, 2017; Amendment to permit a change in hours of operation; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board's Rules. C4-4D zoning district.

PREMISES AFFECTED – 86-68 Bradhurst Avenue aka

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303 West 145<sup>th</sup> Street, Block 2045, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #10M

**ACTION OF BOARD** – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on December 1, 2017, and an amendment to permit a change in the hours of operation of the physical culture establishment (“PCE”).

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2020, and then to decision on April 28, 2020. Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood.

The Premises are bounded by Bradhurst Avenue to the west, West 146th Street to the north, Frederick Douglas Boulevard to the east, West 145th Street to the south, in a C4-4D zoning district, in Manhattan. The site has approximately 200 feet of frontage along Bradhurst Avenue, 113 feet of frontage along West 146th Street, 105 feet of frontage along Frederick Douglas Boulevard, 225 feet of frontage along West 145th Street, 34,128 square feet of lot area and is occupied by an existing ten-story, plus cellar, mixed-use residential and commercial building.

The Board has exercised jurisdiction over the Premises since April 8, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a PCE on a portion of the first floor and cellar level of the Premises on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on December 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; 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 Department of Buildings ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. Board’s Rule § 1-07.3(b)(2) requires a showing by the applicant that the use has been continuous from the expiration of term through the filing of the application and, absent a waiver of the Board’s Rules, substantial prejudice would result. In response, the applicant provided utility invoices for the PCE to continuously cover the period from the expiration of term through the filing of the application and represents that the PCE would incur substantial costs and suffer prejudice should the PCE cease operations at the subject site.

The applicant represents that the PCE continues to operate as “New York Sports Club,” and continues to occupy 15,903 square feet in the Premises (11,400 square feet of floor space in the cellar and 4,503 square feet of floor area on the first floor) but seeks an amendment to reflect the following hours of operation: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., Saturday, 7:00 a.m. to 9:00 p.m., and Sunday, 7:00 a.m. to 7:00 p.m. The applicant also represents that the PCE does not offer massage services.

By letter dated March 3, 2020, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) and fire alarm system that have been inspected and their permits are current. The Fire Department takes exception to the application in that the Public Assembly (PA# 104752442) application filed with DOB has been disapproved since September 9, 2009. The Bureau of Fire Prevention, Licensed Public Place of Assembly Unit inspected these premises and issued appropriate violation orders for failure to obtain an operating permit from DOB. The Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated April 8, 2008, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring December 1, 2027, *on condition* that all work shall substantially conform to drawings as filed with this application, marked “Received March 16, 2020,” five (5) sheets; and *on further condition*:

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code,

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the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act;

THAT the term of the PCE shall be for ten years, expiring on December 1, 2027;

THAT fire safety measures be maintained as shown on the Board-approved plans;

THAT all sound attenuation measures be installed and maintained as per 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. 10-08-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 20, 2021;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2020.

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## 62-15-BZ

APPLICANT – Glen V. Cutrona, AIA, for 139 Bay Street Point, LLC, owner.

SUBJECT – Application December 17, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a residential conversion and enlargement of a two-story commercial building which expires on January 12, 2020.

PREMISES AFFECTED – 139 Bay Street, Block 1, Lot(s) 10, 17, 198, 19, Borough of Staten Island.

## COMMUNITY BOARD #ISI

**ACTION OF BOARD** – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction pursuant to a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the residential conversion and enlargement of a two-story commercial use building which does not comply with the zoning regulations for floor area, lot coverage, side

yards, balconies, and windows to lot line distance, and expired on January 12, 2020.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2020, and then to decision on April 28, 2020. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Premises are an irregularly shaped, triangular zoning lot with frontage along the east side of Bay Street, opposite from and between the intersections of Slosson Terrace and Central Avenue, within a C4-2 zoning district, within the Special Saint George District, on Staten Island. The Premises have approximately 7,211 square feet of lot area, 204'-0" of frontage along Bay Street and a depth, at its deepest point, of approximately 76'-6", reducing to 0'-0".

The Board has exercised jurisdiction over the Premises since January 12, 2016, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21 to permit the residential conversion and enlargement of a two-story commercial use building which does not comply with the zoning regulations for floor area, lot coverage, side yards, balconies, and windows to lot line distance, contrary to Z.R. §§ 128-21, 128-22, 33-25, 23-132(e), and 23-861, on condition that any and all work will substantially conform to drawings as they apply to the objections, filed with the application; the following be the bulk parameters of the proposed building: the proposed six-story building with 18 dwelling units and 32 accessory off-street parking spaces, a height of 68'-5-1/2", containing 28,507 square feet of floor area (3.95 floor area ratio (“FAR”)), a non-complying side yard with a depth of 1'-1/4"; balconies on the second story of the building; lot coverage of 75 percent; and a distance of 10'-11-1/4" between legally required windows and the rear lot line; substantial construction shall be completed in accordance with Z.R. § 72-23, by January 12, 2020; 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)/configuration(s) not related to the relief granted.

The time to complete substantial construction having expired, the applicant now seeks an extension.

The applicant represents that, after the Board’s variance grant in 2016, unforeseen delays have resulted from both ownership changes at the Premises and the state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease in 2020.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the

# MINUTES

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 hereby *amends* the resolution, dated January 12, 2016, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 20, 2024, *on condition*:

THAT the following will be the bulk parameters of the proposed building: the proposed six-story building shall contain 18 dwelling units and shall provide 32 accessory off-street parking spaces, shall have a height of 68’-5-1/2”, containing 28,507 square feet of floor area (3.95 FAR), a non-complying side yard with a depth of 1’-0-1/4”; balconies on the second story of the building; lot coverage of 75 percent; and a distance of 10’-11-1/4” between legally required windows and the rear lot line;

THAT substantial construction shall be completed in accordance with Z.R. § 72-23, by November 20, 2024;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 62-15-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 20, 2024;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2020.

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**2019-297-BZ**

**CEQR #20-BSA-046M**

APPLICANT – Pryor Cashman LLP, for Thor Fifth Avenue LLC, owner; Konnectgolf LLC, lessee.

SUBJECT – Application November 26, 2019 – 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.

PREMISES AFFECTED – 588 Fifth Avenue, Block 1263, Lot 38, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**ACTION OF BOARD** – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 25, 2019, acting on DOB Alteration Type I Application No. 123108742, reads in pertinent part:

“Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, in a C5-3 zoning district and in the Special Midtown District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of an existing 18-story, with cellar, commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 21, 2020, after due notice by publication in *The City Record*, and then to decision on April 28, 2020. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the west side of Fifth Avenue, between West 47th Street and West 48th Street, within a C5-3 zoning district and in the Special Midtown District, in Manhattan. The Premises have approximately 55 feet of frontage along Fifth Avenue, 100 feet of depth, 5,497 square feet of lot area, and are occupied by an existing 18-story, with cellar, commercial building.

The Board has exercised jurisdiction over the subject site since December 9, 1986, when, under BSA Cal. No. 707-86-A, the Board modified a decision of DOB, regarding clear glass exterior window openings on the north and west façade of the Premises, on condition that sprinkler heads be installed and construction substantially conform to plans filed with the application.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The subject PCE occupies 3,162 square feet of floor

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# MINUTES

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area on a portion of the second floor with areas for reception, golf simulation bays, bar and lounge, and sitting area. The PCE has been in operation since February 17, 2019, as “Konnnectgolf,” with the following hours of operation: 6:00 a.m. to 9:00 p.m., Monday through Friday; 9:00 a.m. to 5:00 p.m., Saturday; and 11:00 a.m. to 5:00 p.m., Sunday. The applicant represents that PCE use will not impair the essential character of the surrounding area because it located in an existing commercial building and is compatible with the commercial character of the neighborhood. In addition, the applicant represents that only light-weight equipment and apparatuses are utilized and the ambient sound system installed in the PCE is of low wattage. 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. The applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2), for the issuance of the special permit. The applicant further represents that the Premises are well served by public transportation and the PCE does not create any adverse impacts to vehicular or pedestrian traffic and will not cause an adverse effect on the privacy, quiet, light and air in the neighborhood. 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. By letter dated April 21, 2020, the Fire Department states the Premises have a fire suppression system (standpipe and sprinkler) and fire alarm system that have been inspected by the Fire Department and are current with their permits, and the Fire Department has no objection to the application.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA046M, dated November 27, 2019.

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

in a C5-3 zoning district and in the Special Midtown District, the operation of a PCE on a portion of the second floor of an existing 18-story, with cellar, commercial building, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 3, 2020”- six (6) sheets; and *on further condition:*

THAT this grant shall be limited to a term of ten years, expiring February 17, 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 and sprinkler shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-297-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 20, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2020.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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AND APPEALS

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Volume 105, No. 19

May 22, 2020

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16-36-BZ	1885 Westchester Avenue, aka 1301 White Plains Road, Bronx
551-37-BZ	233-02 Northern Boulevard, Queens
334-78-BZ	233-20 Northern Boulevard, Queens
72-04-BZ	141-54 Northern Boulevard, Queens
209-04-BZ	109-09 15 <sup>th</sup> Avenue, Queens
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**2020-38-BZ**

22-18 Jackson Avenue, Block 00072, Lot(s) 65, Borough of **Queens, Community Board: 2.** Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located on a portion of the first floor of an existing building contrary to ZR §42-10. M1-5/R7X Special Long Island City Purpose District. M1-5/R7X LIC district.  
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**2020-39-A**

235 Oder, Block 02887, Lot(s) 19, 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 §35. R3A zoning district R3A district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**JUNE 15-16, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, June 15, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday June 16, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 528-71-BZ

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

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

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

**COMMUNITY BOARD # 12Q**

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## APPEALS CALENDAR

### 2019-69-70-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**

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## ZONING CALENDAR

### 2019-35-BZ

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

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

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

**COMMUNITY BOARD #15BK**

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### 2019-196-BZ

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

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

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

**COMMUNITY BOARD #5M**

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### 2019-267-BZ

APPLICANT – Eric Palatnik, P.C., for Rochdale Village, Inc., owner; CF Rochdale, LLC, lessee.

SUBJECT – Application September 19, 2019 – 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.

PREMISES AFFECTED – 165-98 Baisley Boulevard, Block 12495, Lot 2, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### 2020-9-BZ

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

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

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

**COMMUNITY BOARD #7Q**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY/TUESDAY MORNING  
MAY 4-5, 2020, 10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of the term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the use of the site as an automotive repair station with accessory uses, and expired on January 23, 2019.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on February 11, 2020, and April 1, 2020, and then to decision on May 4, 2020. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood Community Board 11, Queens, recommends approval of this application on condition that all four clothing bins be removed from the Premises; no vehicles be parked on the sidewalks; the Premises remain clean and free of debris and graffiti; any lighting be directed away from the residences; the size of the dumpster be increased or enclosed; and all prior conditions remain imposed. The Board received testimony from a civic association within whose boundaries the subject site is located, noting conditions of sidewalk parking, tires stacked very high, the parking of unplated vehicles on the Premises, and the presence of debris; and subsequent correspondence noting the correction of some conditions.

The Premises are bounded by Northern Boulevard to the south, Francis Lewis Boulevard to the west, 43rd Avenue to the north, and 201st Street to the east, within an

R3-2 (C2-2) zoning district, in Queens. With approximately 142 feet of frontage along Northern Boulevard, 10 feet of frontage along Francis Lewis Boulevard, 123 feet of frontage along 43rd Avenue, 71 feet of frontage along 201st Street, 5,186 square feet of lot area, the Premises are occupied by an existing one-story automotive repair building and detached storage container.

The Board has exercised jurisdiction over the Premises since October 7, 1952 when, under BSA Cal. No. 22-52-BZ, the Board granted a variance, pursuant to Z.R. §§ 7f, 7i, 7h, to permit, in a business district, the change in occupancy from sale and display of more than five motor vehicles to permit the erection and maintenance of a gasoline service station, lubricatorium car washing, motor vehicle repairs and office, and to permit the parking and storage of motor vehicles on unbuilt open portion of the lot for a term of 15 years, 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, 1953.

On October 17, 1967, under BSA Cal. No. 22-52-BZ, the Board amended the resolution to extend the term for ten years, to expire on October 7, 1977, on condition that the sidewalk along 201st Street be cleared of weeds; trees be planted in front of the premises on 201st Street in accordance with the regulations of the Department of Parks; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On January 23, 1979, under the subject calendar number, the Board permitted a change of use, pursuant to Z.R. § 11-413, to an automobile repair and muffler installation establishment on condition that all work substantially conform to drawings filed with the application; the term be for ten years; the hours of operation be restricted to 8:00 a.m. to 6:00 p.m., Monday through Saturday, except Thursdays, from 8:00 a.m. to 9:00 p.m., and closed on Sunday; business signs comply with the C2 district regulations; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year, by January 23, 1980.

On May 2, 1989, under the subject calendar number, the Board amended the variance to extend the term for ten years, to expire January 23, 1999, and to permit the existing storage container to remain on the premises, 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; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained within one year, by May 2, 1990.

On September 12, 2000, under the subject calendar number, the Board further amended the resolution to extend the term on condition that the term be limited to ten years to expire on January 23, 2009; cars not be parked on the sidewalk; the property be maintained free of debris and graffiti; the premises be maintained in substantial

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# MINUTES

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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 September 12, 2001.

On August 19, 2014, 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 an additional ten years, to expire on January 23, 2019, on condition that all work substantially conform to drawings, filed with the application; tires not be stored at the site, except within the building or storage containers; the hours of operation be limited to Monday through Friday, from 8:00 a.m. to 9:00 p.m., Saturday from 8:00 a.m. to 6:00 p.m., and closed Sunday; landscaping be maintained in accordance with the BSA-approved plans; the site be maintained free of graffiti and debris; only vehicles awaiting service may be stored at the site overnight; vehicles not obstruct the sidewalk; the conditions be noted in 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); and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension. Pursuant to Z.R. §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of term of a variance.

Over the course of hearings, the Board raised concerns regarding the hours of operation, presence of outdoor tire storage at the Premises, high lumen measurements, and clothing bins. In response, the applicant provided an updated lumen study demonstrating the lighting away from residential properties, photos demonstrating the removal of the clothing bin, neatly stacked tires, and agreed to close the operation on Sundays.

By letter dated March 9, 2020, the Fire Department states that a review of their records indicates that the subject automotive repair shop is current with its permits for the repair shop, storage of tires and tire byproducts, store/use, and sale of combustible liquids less than 500 gallons, and, based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of term 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 23, 1979, as amended through August 19, 2014, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten years, to expire on

January 23, 2029; on condition that all work and site conditions shall conform to drawings filed with this application marked “Received January 22, 2020”- one (1) sheet; and *on further condition*:

THAT this grant shall be limited to a term of ten years, to expire on January 23, 2029;

THAT the hours of operation shall be limited to 8:00 a.m. to 8:00 p.m., Monday through Friday, 8:00 a.m. to 6:00 p.m., Saturday, closed on Sunday;

THAT all tires shall be stored inside after business hours;

THAT tires stacked against the wall during business hours shall be no higher than the wall height;

THAT there shall be no parking on the grass or sidewalks;

THAT only vehicles awaiting service are permitted to be parked overnight on the Premises;

THAT vehicles shall not obstruct the sidewalk;

THAT all lighting shall be maintained down and away from residential properties;

THAT there shall be no clothing bins present at the Premises;

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

THAT the asphalt and walls shall be maintained in first class condition;

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. 751-78-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 2021;

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 4, 2020.

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# MINUTES

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## 2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application November 6, 2019 – Amendment of a previously approved Special Permit (§73-622) for the enlargement of an existing single-family home contrary to the previous Board approval. R2 zoning district.

PREMISES AFFECTED – 1367 East 24<sup>th</sup> Street, Block 7660, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, pursuant to Z.R. §§ 73-01 and 73-03, for an amendment of a special permit, previously granted by the Board, pursuant to Z.R. § 73-622, which permitted the enlargement of an existing single family home contrary to floor area ratio and open space ratio (Z.R. § 23-141), and less than the required rear yard (Z.R. § 23-47).

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, with a continued hearing on March 24, 2020, and then to decision on May 4, 2020. Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board was in receipt of one letter in objection to the application.

The Premises are located on the east side of East 24th Street, between Avenue M and Avenue N, in an R2 zoning district, in Brooklyn. With approximately 40 feet of frontage on East 24th Street, 100 feet of depth, 4,000 square feet of lot area, the Premises are occupied by a two-story plus cellar and attic single-family detached dwelling containing 2,792 square feet of floor area (0.70 floor area ratio (“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 side yards with widths of 4’ and 8’-10”, and a detached one-story stucco frame garage in the rear.

The Board has exercised jurisdiction over the Premises since March 19, 2019, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-622, to permit 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 Z.R. §§ 23-141 and 23-47, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the following 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; 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; substantial construction be completed pursuant to Z.R. § 73-70; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 2017-247-BZ”) be obtained within four years, by March 19, 2023; the approval be limited to the relief granted by the Board in response to specifically cited Department of Buildings (“DOB”)/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the special relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

The applicant represents that the Premises owner changed architects, reevaluated their plans, and seeks an amendment to the special permit to adjust the shape of the dwelling that will not increase the waivers granted by the Board. Specifically, the applicant proposes to maintain the front yard, rear yard, and side yards, and increase the northern side yard width to 5’ as previously approved, and seeks to reduce the floor area of the building, from 4,000 square feet to 3,998 square feet, and increase the open space, from 58% (2,309 square feet of open space) to 59% (2,345 square feet of open space). The applicant also represents that the proposed will retain more walls than that approved under the special permit.

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 March 19, 2019, so that as amended this portion of the resolution shall read: “to *permit* 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 Z.R. §§ 23-141 and 23-47, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received March 5, 2020” – eighteen (18) sheets; and *on further condition*:

THAT the following be the bulk parameters of the building: a maximum floor area ratio of 1.0 (3,998 square feet of floor area), a minimum open space ratio of 0.59 (2,345 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 more than 50% 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 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

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approval and calendar number (“BSA Cal. No. 2017-247-BZ”), shall be obtained within four years an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 2024;

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

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

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

Adopted by the Board of Standards and Appeals, May 4, 2020.

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## 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 15<sup>th</sup> Avenue, Block 4044, Lot 60, Borough of Queens.

### COMMUNITY BOARD #7Q

ACTION OF BOARD – Application withdrawn.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction, pursuant to a variance, granted pursuant to Z.R. § 72-21, which permitted the conversion and enlargement of an existing industrial building to residential use, contrary to Z.R. § 42-00, and expired on December 4, 2016.

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 May 4, 2020. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding area.

The Premises are located on the northwest corner of 15th Avenue and 110th Street, within an M2-1 zoning district, in Queens. With approximately 175 feet of frontage along 15th Avenue, 200 feet of frontage along 110th Street, and 100,338 square feet of lot area, the Premises are occupied with a six-story structure under construction.

The Board has exercised jurisdiction over the Premises

since July 19, 2005, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the conversion and enlargement of an existing industrial building to residential use, contrary to Z.R. § 42-00, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the building contain a maximum of 134 units; the total residential floor area ratio not exceed 1.29; there be a total of 139 accessory parking spaces located in a two-cellar garage; and, the total height of the building not exceed 67'-4" (with parapet); the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

On the same day, under BSA Cal. No. 210-04-A, the Board modified requirements of General City Law § 35 to permit the construction of a building in the bed of a mapped street.

On April 28, 2009, under the subject calendar number, the Board amended the resolution to extend the time to complete construction for three years, to expire on July 19, 2012, on condition that substantial construction be completed by July 19, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On June 18, 2012, the Board, by letter, permitted modifications to the plans as in substantial compliance with the grant, including the elimination of the second cellar, relocation of some of the parking spaces to the first floor, the construction of a passage between the two towers, and minor changes to the façade.

On December 4, 2012, under the subject calendar number, the Board further amended the resolution to extend the time to complete construction for a term of four years, to expire on December 4, 2016, on condition that substantial construction be completed by December 4, 2016; 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.

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The time to have completed substantial construction having expired, the applicant seeks an extension. After the first hearing, the applicant requested adjournments in June 2019, December 2019, and May 2020. The Board expressed concern that the applicant failed to prosecute the application. At hearing, on May 4, 2020, the applicant requested to withdraw the application.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, May 4, 2020.

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## 16-36-BZ

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

SUBJECT – Application February 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (BP) with accessory uses which expired on November 1, 2017; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue aka 1301 White Plains Road, Block 3880, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

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 29-30, 2020, at 10 A.M., for decision, hearing closed.

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## 551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M., for continued hearing.

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## 334-78-BZ

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

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

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M., for continued hearing.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

## COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M., for continued hearing.

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## 51-06-BZ

APPLICANT – Sheldon Lobel, P.C.

SUBJECT – Application January 16, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a dance studio (UG 9) and a physical cultural establishment (*Push Fitness Club*) which expired on December 12, 2016; Amendment to permit a change in hours of operation for the PCE; Waiver of the Board’s Rules of Practice and Procedure. C1-2R2A zoning district.

PREMISES AFFECTED – 188-02 Union Turnpike, Block 7266, Lot 1, Borough of Queens.

## COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 2018-198-A

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

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

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

## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to August 3-4, at 10 A.M., for adjourned hearing.

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## ZONING CALENDAR

**2017-270-BZ**

**CEQR #18-BSA-036K**

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 15, 2017, acting on Department of Buildings Alteration Type I Application No. 321377470, reads in pertinent part:

“ZR 43-121: Proposed floor area exceeds the maximum permitted as per ZR 43-121. Obtain BSA approval.”

This is an application made pursuant to Z.R. §§ 73-53 and 73-03, to permit, within an M1-1 zoning district, the proposed enlargement of an existing building used for wholesale automobile transmission parts sales (Use Group (“UG”) 16D) and automobile repairs (UG 17B), contrary to Z.R. § 43-121.

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, November 19, 2019, and April 1, 2020, and then to decision on May 4, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 17, Brooklyn, recommends approval of this application.

The Premises are located on the northwest corner of Utica Avenue and Farragut Road, within an M1-1 zoning district, in Brooklyn. With 40 feet of frontage along Utica Avenue, 100 feet of frontage along Farragut Road, 4,000 square feet of lot area, the Premises are occupied by an existing one-story building used for wholesale automobile transmission parts sales (UG 16D) and automobile repairs (UG 17B), containing 4,000 square feet of floor area. The applicant notes that construction of the existing building was authorized by DOB permit NB 754/57 issued prior to the adoption of the Zoning Resolution on December 15, 1961.

The Board has exercised jurisdiction over the Premises since March 18, 1958, when, under BSA Cal. No. 754-57-BZ, granted an application to permit, for a term of 15 years, the erection of a one-story building on condition that the

building comply with the requirements of the Zoning Resolution, the Building Code, and any other law or rule applicable thereto; the building may be occupied as proposed as an automobile repair shop with body and fender work including welding and touch-up painting and spraying as proposed; any license required by the Fire Department for any equipment be obtained; the space left vacant on the lot as indicated on plans be paved and metal fences of the woven wire chain link type be erected on the building lines including the front building line, which shall be fitted with gates and such space may be used for the parking under Section 7e for a similar term of two cars belonging to the employees of the building; and, all permits be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution. On March 31, 1959, under BSA Cal. No. 754-57-BZ, the Board amended the resolution by adding that in the event the owner desires to make certain minor changes, such changes may be permitted as follows: there may be a window introduced on the west side of the building opening upon the property of this owner; such window may be the width as shown on plans filed with the application and be of steel frame glazed with wire glass; the overhead door may be increased to 21 feet in width as shown on such plans; curb cut opposite the widened door may be increased to 18 feet as shown on such plans and as passed by the Borough Superintendent, on condition that in all other respects the resolution be complied with.

Prior to the expiration of the 15 year term, the zoning district in which the Premises is located was changed to an M1-1 zoning district and, on February 24, 1965, DOB approved Alteration Application 2568/1963 to permit an extension to the building for which a certificate of occupancy was issued permitting UG 17B use at the site.

The applicant states that the building is occupied as wholesale automobile transmission parts sales (UG 16D) and automobile repairs (UG 17B). The proposed enlargement will add a second story (2,500 square feet of floor area) to be used for accessory storage for the UG 16D wholesale automobile transmission parts sales and increase the floor area to 6,500 square feet (1.63 floor area ratio (“FAR”). The enlargement would result in a non-compliance in an M1-1 zoning district because 1.63 FAR is proposed and, per Z.R. § 43-12, the maximum permitted commercial or manufacturing FAR is 1.0.

As to the prerequisites for the subject special permit, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to Z.R. §§ 11-412, 43-121 or 72-21; and, that the subject use is listed in UG 16 and UG 17, not UG 18.

The permitted enlargement may be the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or 2,500 square feet. The applicant proposes to

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enlarge the building by 2,500 square feet, in compliance with the limitation. the applicant represents that the enlargement is an entirely enclosed building, and that all activities generated by the enlargement (accessory offices, storage and processing) shall be within the building. The applicant states that the accessory storage in the enlarged portion of the building shall conform to all performance standards applicable in an M1 zoning district located at the boundary of a residence district. The applicant states that no open uses of any kind are proposed within 30 feet of a rear lot line that is located within a residence district. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within 30 feet of a rear lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within eight feet of a side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no open uses of any kind are proposed within eight feet of the side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement is proposed within eight feet of the lot line that coincides with a side lot line of a zoning lot in a residence district. Additionally, no side yard is required in the subject manufacturing district.

The applicant represents that the enlargement, which will be used for storage, will not generate a significant increase in vehicular or pedestrian traffic, nor will cause any congestion in the surrounding area. As to potential parking impacts, the applicant states that, per Z.R. § 44-23, no parking is required at the Premises. The applicant also notes that there will be no yards or loading berths and states that the proposed enlargement will not alter the essential character of the neighborhood or district in which the use is located, nor impair the future use or development of the surrounding area.

Over the course of hearings, the Board raised concerns regarding whether the UG 16D use has been operating at the site for five years. In response, the applicant provided invoices, product suppliers' letters, an accountant's letter, and owner's testimony demonstrating that the Premises has operated, in part, as a business for the wholesale of automobile transmission parts for at least five years.

By letter dated August 21, 2019, the Fire Department states that they object to a 6'x6' opening is shown on the proposed second floor plans. The purpose of the opening is to move auto transmission parts stored at the second floor down between the first and second floors, to be moved by forklift. The Department objects to the arrangement in that the opening is not fully enclosed and not protected. The Department recommends that the opening be protected with a water curtain (sprinkler system), to prevent the spread of smoke and fire. The water curtain system is to be located on the underside of the opening, since the higher hazard is located at the first floor (auto repair and wholesale auto). In addition, the Fire Department requests additional details of the railing and gate being proposed at the second floor,

surrounding the opening. The Department would like details provided showing a toe-board, mid-rail location, and gate construction.

By letter dated November 18, 2019, the Fire Department states that they received the revised plans which show a proposed water curtain installed on the underside of the proposed opening and details of the fence and gate at the new opening. The Department finds both to be acceptable and have no further objection to the application.

Based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use are outweighed by the advantages to be derived by the community. The proposed project will not interfere with any pending public improvement project. Therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03.

The project is classified as an unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 18BSA036K, dated November 18, 2019. The EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended and makes each and every one of the required findings under ZR §§ 73- 53 and 73-03 to permit the enlargement of an existing building used for wholesale automobile transmission parts sales (Use Group ("UG") 16D) and automobile repairs (UG 17B), contrary to Z.R. § 43-121, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 13, 2019" – six (6) sheets, and "Received November 18, 2019" two (2) sheets; and *on further condition*:

THAT no parking shall be permitted on the sidewalk;

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

THAT a certificate of occupancy, also indicating this

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approval and calendar number (“BSA Cal. No. 2019-270-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 January 10, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, May 4, 2020.

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## 2018-15-BZ

### CEQR #18-BSA-093M

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 26<sup>th</sup> Street, Block 775, Lot 64, Borough of Manhattan.

### COMMUNITY BOARD #4M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 5, 2018, acting on DOB Alteration Type I Application No. 123258232, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in C6-2A Zoning District and is contrary to section ZR 32-10.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (“PCE”) on the third floor of an existing four-story plus cellar commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 25, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2020, and then to decision on May 4, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board

4, Manhattan, recommends approval of this application. The Board also received two form letters in support of this application.

The Premises are located on the south side of West 26th Street between Eighth Avenue and Seventh Avenue, within a C6-2A zoning district, in Manhattan. With approximately 85 feet of frontage along West 26th Street, 99 feet of depth, 8,368 square feet of lot area, the Premises are occupied by an existing four-story plus cellar commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 7,410 square feet of floor area on the third floor with areas for fitness, reception, offices, locker rooms, and showers. The PCE began operation on January 2, 2013, as “Marcelo Garcia Brazilian Jiu-Jitsu,” with the following hours of operation: Monday through Friday, 7:00 a.m. to 10:00 p.m., Saturday, 10:30 a.m. to 1:30 p.m., and Sunday, 10:30 a.m. to 12:30 p.m.

The applicant states that, while the PCE will be located within a commercial building, sound attenuation measures are maintained within the PCE space to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces. These measures include multi-density open-cell foam mats on the entire floor space to absorb impact and reduce sound, that are specifically designed for professional fight schools, laid over an underlayment made of 1/2” cross-linked polyethylene closed-cell foam. 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 the existing building, within a mixed-use area with offices occupying the remainder of the Premises and does not increase traffic to the surrounding area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for the practice of martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the

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corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located entirely within an existing building and is compatible with the uses in the surrounding area. The applicant states that a sprinkler system and an approved fire alarm system will be maintained within the PCE space. By letter dated February 22, 2020, the Fire Department objects to the application and states that the Premises are protected by fire suppression systems (standpipe and sprinkler) and a fire alarm system which have been tested satisfactory, as witnessed by members of the Bureau of Fire Prevention. The Bureau's Licensed Public Place of Assembly Unit ("LPPA") inspected these premises and issued two violation orders for failure to have exit doors open to the direction of egress and failure to obtain a certificate of operation and plans from the Department of Buildings. By letter dated March 9, 2020, the Fire Department states that they reviewed the revised plans of the proposed new location of the fireproof self-closing exit door leading to Stair "A" and finds it to be acceptable. Final approval is required from DOB. LPPA will conduct inspections at a later date to determine that compliance with the two open violation orders have been complied with. Based on the foregoing, the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA093M, dated August 6, 2019.

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 the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-2A zoning district, the operation of a physical culture establishment on the third floor of an existing four-story plus cellar commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received March 6, 2020"- eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring May 4, 2030;

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2018-15-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, May 4, 2020.

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**2018-146-BZ**

**CEQR #19-BSA-033K**

APPLICANT – Eric Palatnik, P.C., for Yehoshua Augenbaum, owner.

SUBJECT – Application September 7, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (FAR, Lot Coverage and Open Space); ZR §23-621(b) (Perimeter Wall Height); ZR §23-47 (Rear Yard) and ZR §23-461 (Side Yard). R2 zoning district.

PREMISES AFFECTED – 1315 East 24<sup>th</sup> Street, Block 7660, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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

THE VOTE –

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# MINUTES

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

The decision of the Department of Buildings (“DOB”), dated March 2, 2020, acting on Department of Buildings Alteration Type I Application No. 321729885, reads in pertinent part:

“Proposed vertical and horizontal enlargement of an existing two family home located in an R2 zoning district is non-compliant in regard to:  
FAR: Proposed floor area is contrary to ZR 23-141  
Open Space: Proposed open space is contrary to ZR 23-141  
Side Yards: Proposed side yards are contrary to ZR 23-461(a)  
Rear Yard: Proposed rear yard is contrary to ZR 23-47  
And must be referred to the Board of Standards and Appeals for Special Permit pursuant to ZR 73-622.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, 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 ratio (“OSR”), side yards, and rear yards contrary to Z.R. §§ 23-141, 23-461 and 23-47.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, with a continued hearing on March 24, 2020, and then to decision on May 4, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board was also in receipt of one form letter and three letters in support of this application.

The Premises are located on the east side of East 24th Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn. With approximately 40 feet of frontage along East 24th Street, 100 feet of depth, 4,000 square feet of lot area, the Premises are occupied by an existing three-story plus cellar single-family detached residence.

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

The existing single-family residence is a three-story plus cellar detached residence with 0.73 FAR (2,946 square feet of floor area), 95% OSR, two side yards with widths of

8’ and 4’-1”, and a rear yard with a depth of 31’-2”. The applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 0.99 FAR (3,965 square feet of floor area), 60% OSR, two side yards with widths of 8’ and 4’-1”, and a rear yard with a depth of 24’-4” at the first floor, and 28’-4” above.

At the Premises, 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 FAR of 0.5) is required, two side yards with minimum widths of 5 feet, with 13 feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-141, 23-461, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 1,189 square feet to 1,626 square feet, the second floor, from 1,229 square feet to 1,567 square feet, and third floor, from 528 square feet to 772 square feet.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R2 zoning district (the “Study Area”), finding that, of the 98 qualifying residences, 76 residences (78 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.11. With regard to the open space ratio, the applicant submitted a lot coverage study, demonstrating that 40 lots (41 percent) within the Study Area have a lot coverage 35 percent or greater. The applicant submitted a rear yard study demonstrating that, on the subject block, 27 interior lots (87 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 2 feet, and 11 lots have rear yards with a depth of 24 feet or less.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA033K, dated September 11, 2018.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination

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under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 *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, open space ratio, and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “April 15, 2020”-eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.99 FAR (3,965 square feet of floor area), a minimum of 60% OSR, two side yards with minimum widths of 8’ and 4’-1”, and a rear yard with minimum depths of 24’-4” at the first floor, and 28’-4” above, as illustrated on the Board-approved plans; and

THAT the only areas within the attic with structural headroom of eight feet or greater are permitted to be floor area, as shown 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. 2018-146-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 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, May 4, 2020.

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## 2019-64-BZ

### CEQR #19-BSA-110K

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 24<sup>th</sup> Street, Block 7659, Lot 61, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 3, 2019, acting on Department of Buildings Alteration Type I Application No. 321847445, reads in pertinent part:

The proposed enlargement of the existing one family residence in an R2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 23-141 of the Zoning Resolution;
2. Creates non-compliance with respect to the open space and is contrary to section[] 23-141 of the Zoning Resolution;
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of section 23-461 of the Zoning Resolution;
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of section 23-47 of the Zoning Resolution.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, 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 ratio (“OSR”), side yards, and rear yards contrary to Z.R. §§ 23-141, 23-461 and 23-47.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on March 17, 2020, and April 2, 2020, and then to decision on May 4, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 24th Street, between Avenue M and Avenue N, within an R2

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zoning district, in Brooklyn. With approximately 40 feet of frontage along East 24th Street, 100 feet of depth, 4,000 square feet of lot area, the Premises are occupied by an existing three-story plus cellar single-family detached residence.

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

The existing single-family residence is a three-story plus cellar detached residence with 0.52 FAR (2,067 square feet of floor area), 147% OSR (3,043 square feet of open space), two side yards with widths of 3' and 9'-11-3/4", and a rear yard with a depth of 32'-10-1/2". The applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 0.95 FAR (3,814 square feet of floor area), 65% OSR (2,466 square feet of open space), two side yards with widths of 3' and 9'-11-3/4", and a rear yard with a depth of 23' at the first floor, 25' at the second floor, and 30' above.

At the Premises, 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 FAR of 0.5) is required, two side yards with minimum widths of 5 feet and 13 feet of total side yards, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-141, 23-461, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 957 square feet to 1,534 square feet, the second floor, from 944 square feet to 1,469 square feet, and third floor, from 166 square feet to 811 square feet.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R2 zoning district (the "Study Area"), finding that, of the 106 qualifying residences, 81 residences (76 percent) have an FAR greater than 0.5, ranging from 0.51 to 1.04. The applicant submitted a rear yard study demonstrating that, on the subject block, 19 interior lots (58 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 3 feet, and 9 lots have rear yards with a depth of 23 feet or less. The proposed enlargement includes an extension of the existing non-complying 3' wide side yard, and, pursuant to a 1930 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board

finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA110K, dated March 28, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 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, open space ratio, and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received March 5, 2020" – twenty (20) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.95 FAR (3,814 square feet of floor area), a minimum of 65% OSR (2,466 square feet of open space), two side yards with minimum widths of 3' and 9'-11-3/4", and a rear yard with minimum depths of 23' at the first floor, 25' at the second floor, and 30' above, as illustrated on the Board-approved plans; and

THAT only with structural headroom of eight feet or greater are permitted to be considered floor area within the attic, as shown 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. 2019-64-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 9, 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;

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

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

Adopted by the Board of Standards and Appeals, May 4, 2020.

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## 2019-65-BZ

### CEQR #19-BSA-111K

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

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 27, 2019, acting on Department of Buildings Alteration Type I Application No. 321848809, reads in pertinent part:

- “1. Proposed plans are contrary to Zoning Resolution Section 23-461 in that the proposed side-yard straight-line extension is less than the minimum required;
2. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear-yard is less than the minimum required.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the conversion and enlargement of an existing two-story plus cellar two-family detached residence that does not comply with zoning regulations for side yards and rear yards contrary to Z.R. §§ 23-461 and 23-47.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on March 24, 2020, and then to decision on May 4, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board was in

receipt of two form letters in opposition to this application and citing concerns over the rear yard extension.

The Premises are located on the north side of Avenue W, between East 1st Street and East 2nd Street, within an R4 zoning district and in the Special Ocean Parkway District, in Brooklyn. With approximately 40 feet of frontage along Avenue W, 100 feet of depth, 48 feet of width along the rear of the Premises, 4,264 square feet of lot area, the Premises are occupied by an existing two-story plus cellar two-family detached residence.

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

The existing two-family residence is a two-story plus cellar detached residence with 0.61 floor area ratio (“FAR”) (2,600 square feet of floor area), two side yards with widths of 4’ and 11’, and a rear yard with a depth of 37’-11”. The applicant proposes to convert and enlarge the two-family detached residence resulting in a three-story plus cellar single-family detached residence with 1.08 FAR (4,587 square feet of floor area), two side yards with widths of 4’ and 9’-6”, and a rear yard with a depth of 20’ at the first floor, 25’ at the second floor, and 30’ above.

At the Premises, a maximum of 1.35 FAR is permitted pursuant to DOB determination that the Premises are located in a predominantly built-up area, as defined by Z.R. § 12-10, two side yards with minimum widths of 5 feet, with 13 feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-141, 23-461, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 1,300 square feet to 1,826 square feet, the second floor, from 1,300 square feet to 1,699 square feet, and create a third floor with 1,061 square feet of floor area.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant submitted a rear yard study demonstrating that, on the subject block, 27 interior lots (50 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 5 feet, and 11 lots have rear yards with a depth of 20 feet or less at the first floor.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the



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

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA111K, dated March 28, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 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, open space ratio, and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “March 5, 2020”-nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard with minimum depths of 20’ at the first floor, 25’ at the second floor, and 30’ 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. 2019-65-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 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, May 4, 2020.

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## 2019-174-BZ

### CEQR #19-BSA-149Q

APPLICANT – Victor K. Han, RA, AIA, for Sung Woo Han, owner; Renzo Gracie Bayside LLC, lessee.

SUBJECT – Application June 14, 2019 – 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.

PREMISES AFFECTED – 45-58 Bell Boulevard, Block 7315, Lot 30, Borough of Queens.

### COMMUNITY BOARD #11Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 17, 2019, acting on DOB Alteration Type I Application No. 421688613, reads in pertinent part:

“Proposed legalization of existing physical culture establishment (mix-martial arts academy) in the cellar of an existing building in an R4B/C2-2 zoning district is contrary to section 32-10ZR.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an R4B (C2-2) zoning district, the operation of a physical culture establishment (“PCE”) on the cellar level of an existing two-story plus cellar commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on March 25, 2020, after due notice by publication in *The City Record*, and then to decision on May 4, 2020. Community Board 11, Queens, recommends approval of this application. The Board received one form letter in support of this application and one form letter in objection, citing concerns over traffic and congestion.

The Premises are located on the west side of Bell Boulevard between 46th Avenue and 47th Avenue, within an R4B (C2-2) zoning district, in Queens. With approximately 50 feet of frontage along Bell Boulevard, 118 feet of depth, 5,905 square feet of lot area, the Premises are occupied by an existing two-story plus cellar commercial building.

The Board has exercised jurisdiction over the Premises since January 23, 1996, when, under BSA Cal. No. 29-95-BZ, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a PCE in the cellar, a portion of the first floor, and the entire second floor 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 PCE without prior application to and approval from the Board; scheduled classes not be held before 8:00 a.m. or after 10:00 p.m. and all doors and windows be kept closed before and after that time in order to minimize noise levels; all signs comply with C2 district

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regulations and be limited to those specified on BSA-approved plans; no outdoor uses accessory to the establishment be permitted; the HVAC equipment be located on the roof and baffled with sound barriers in accordance with BSA-approved plans; the special permit be limited to a term of eight years to expire on January 23, 2004; 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 Z.R. § 73-30.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 5,067 square feet of floor space on the cellar level with areas for the practice of martial arts, locker rooms, offices, and storage. The PCE operates as “Renzo Gracie Bayside,” with the following hours of operation: Monday through Friday, 7:00 a.m. to 9:00 p.m., and Saturday, 9:00 a.m. to 12:00 p.m.

The applicant states that, while the PCE will be located within a commercial building, the PCE maintains mats in exercise areas and no amplified music is used. 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 the cellar of an existing building. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for the practice of martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located entirely within an existing commercial building and is compatible with the

uses in the surrounding area.

By correspondence dated March 25, 2020, the Fire Department states that the Bureau’s Licensed Public Place of Assembly Unit has been informed of the PCE legalization application and will conduct an inspection at a later date. The Premises and PCE space are not required to have a fire suppression system or a fire alarm system. Based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA149Q, dated June 18, 2019.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an R4B (C2-2) zoning district, the operation of a physical culture establishment on the cellar level of an existing two-story plus cellar commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received September 12, 2019”- seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring May 4, 2030;

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

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

THAT accessibility shall be provided pursuant to the 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;

# MINUTES

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-174-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 2021;

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 4, 2020.

## 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 14<sup>th</sup> Avenue (1372-1384 62<sup>nd</sup> St., 1370 62<sup>nd</sup> St, 6210 14<sup>th</sup> Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to August 3-4, 2020, at 10 A.M., for adjourned hearing.

## 2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to August 3-4, 2020, at 10 A.M., for adjourned 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 August 3-4, 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 41<sup>st</sup> Street, Block 679, Lot 23, Borough of Queens.

## COMMUNITY BOARD #1Q

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 15-16, 2020, at 10 A.M., for decision, hearing closed.

## 2019-188-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s USA LLC, owner.

SUBJECT – Application July 15, 2019 – 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.

PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, frontages on East Gun Hill Road, Tenbroeck Avenue and Pearsall Avenue, Block 4617, Lot 40, Borough of Bronx

## COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M., for continued hearing.

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
MAY 4-5, 2020, 2:00 P.M.**

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

**ZONING CALENDAR**

**2019-84-BZ**

APPLICANT – Akerman LLP, for 107-18 Realty Associates, owner; FIT4U, LLC, lessee.  
SUBJECT – Application May 1, 2019 – 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.  
PREMISES AFFECTED – 107-18 70<sup>th</sup> Road, Block 3239, Lot 38, Borough of Queens.

**COMMUNITY BOARD #6Q**

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 15-16, 2020, at 10 A.M., for decision, hearing closed.

**2019-265-BZ**

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.  
SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.  
PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M., for continued hearing.

**603-71-A**

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.  
SUBJECT – Application September 12, 2019 – Amendment of a previously approved application that permitted a building located within the bed of mapped street contrary to General City Law 35. C1-1/R2 Special South Richmond District.  
PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M., for continued hearing.

**2019-273-BZ**

APPLICANT – Law Office of Jay Goldstein, for Magnum Real Estate Group, owner; Rumble Fitness LLC, lessee.  
SUBJECT – Application October 8, 2019 – 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.  
PREMISES AFFECTED – 139-146 West Street (90-110 Barclay Street, 88-110 Vesey Street, 206-222 Washington St), Block 84, Lot 7501, 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 June 15-16, 2020, at 10 A.M., for decision, hearing closed.

**2019-306-BZ**

APPLICANT – Law Office of Jay Goldstein, for Betty Kaufman Weisberger Trust FBO Robert E Kaufman, owner; Rumble Fitness LLC, lessee.  
SUBJECT – Application December 20, 2019 – 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.  
PREMISES AFFECTED – 49 West 23<sup>rd</sup> Street, Block 825, Lot 12, 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 June 15-16, 2020, at 10 A.M., for decision, hearing closed.

*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 20-21

May 29, 2020

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## DIRECTORY

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# DOCKETS

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**2020-40-A**

139-141 Orchard Street, Block 00415, Lot(s) 63, 67, Borough of **Manhattan, Community Board: 3**. 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. C4-4A zoning district. C4-4A district.  
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**2020-41-BZ**

107-02 Queens Boulevard, Block 03238, Lot(s) 44, Borough of **Queens, Community Board: 6**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Planet Fitness) to locate on a portion of the cellar and first floor of a new building contrary to ZR §32-10. C4-5X, C4-4A, Special Forest Hills District C4-5X, C4-4A district.  
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**2020-42-BZ**

155 Girard Street, Block 8750, Lot(s) 0383, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district. R3-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**JUNE 29-30, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, June 29, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday June 30, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### **853-53-BZ**

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

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

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

**COMMUNITY BOARD #15BK**

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### **195-02-BZ**

APPLICANT – Pryor Cashman LLP, for McDonald's Corporation, owner.

SUBJECT – Application September 4, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility which expires on November 23, 2023; Amendment to permit an enlargement; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, Block 4471, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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### **162-09-BZ**

APPLICANT – Akerman LLP, for Steinway 30-33, LLC, owner, PFNY, LLC, lessee.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (*Planet Fitness*) on the cellar, first and second floors of a two-story commercial building which expired on December 1, 2018; Waiver of the Board's Rules of Practice and Procedure.

PREMISES AFFECTED – 30-33 Steinway Street, Block 00680, Lot 0032, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## ZONING CALENDAR

### **2020-6-BZ**

APPLICANT – Law Office of Jay Goldstein, PLLC, owner.

SUBJECT – Application January 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Strengthen Lengthen Tone*) to be located on portions of the first, third and fourth floors of an existing 13-story commercial building contrary to ZR 32-10. C5-2 zoning district.

PREMISES AFFECTED – 88 Madison Avenue, Block 00858, Lot 0017, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Margery Perlmutter, Chair/Commissioner*



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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
MAY 18-19, 2020, 10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**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** – 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, May 18, 2020.

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**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 July 13-14, 2020, at 10 A.M. for continued hearing.

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**27-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner; Brooklyn Banya c/o Alona Kruglak, lessee.

SUBJECT – Application December 27, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Banya*) which expired on October 16, 2016; Amendment Waiver of the Rules. C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 602-04 Coney Island Avenue, Block 5361, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M. for adjourned hearing.

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**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 September 15-16, 2020, at 10 A.M. for adjourned hearing.

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**23-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M. for continued hearing.

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# MINUTES

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## 120-13-BZ

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, owner.

SUBJECT – Application August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, irregularly shaped 42,788 square foot lot with frontage on Forest Avenue and Morningstar Road. Block 1180, Lot(s) 6, 49. Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M. for adjourned hearing.

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## APPEALS CALENDAR

### 2019-185-A & 2019-186-A

APPLICANT – P. Vengoechea/T. Boyland; V&B Architecture; for Raymond Giffen Sr. Trust, owner.

SUBJECT – Application July 2, 2019 – 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.

PREMISES AFFECTED – 57 & 53 Fletcher Street, Block 2974, Lot 4 & 7. Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

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

The decisions of the Department of Buildings (“DOB”), dated June 4, 2019, acting on DOB New Building Application Nos. 520366247 and 520366238, reads in pertinent part:

- “1. GCL 35 A) Proposed Construction located partly within the bed of a mapped street is contrary to Section 35 of the General City Law. Obtain Board of Standards and Appeals Approval
2. ZR 23-00 ZR 72-01 (g) B) Proposed new building has bulk non-compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals approval.”

This is an application under General City Law (“GCL”) § 35 and Z.R. § 72-01(g) to permit construction within the bed of a mapped, but unimproved, street that does not comply with bulk regulations affected by the unimproved street.

A public hearing was held on these applications on February 4, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2020, and then

to decision on May 18, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 1, Staten Island recommends disapproval of this application citing concerns over the current narrow width of the Fletcher Avenue and that development of this project and similar ones would detract from plans to widen the roadway.

The Premises are located on the north side of Fletcher Street, between St. Mary’s Avenue and Virginia Avenue, in an R3A zoning district, on Staten Island. The proposed residence at 53 Fletcher Street (Lot 7) will have approximately 39 feet of frontage along Fletcher Street, a depth between 65 and 71 feet, and 3,135 square feet of lot area. The proposed residence at 57 Fletcher Street (Lot 4) will have approximately 44 feet of frontage along Fletcher Street, a depth between 65 and 67 feet, and 3,135 square feet of lot area. Both sites are currently vacant.

The applicant proposes to construct two new two-story with cellar, two-family detached residences. The applicant requests a waiver of Z.R. § 23-45 for of the minimum required front yard and to approve any front yard setback from the zoning lot under and a waiver of Z.R. § 23-65 for any height and setback requirements. The applicant further represents that the residences have been designed in context with the established character of the neighborhood, noting that it will be modest in size and will have the requisite ten-foot front yard.

The surrounding residences to the east of the proposed development along Tompkins Avenue are mixed use, multi-family walk up buildings with ground floor commercial uses and residential use on the upper floors. The surrounding neighborhood consists mostly of one- and two-family residences of both semi-detached, detached and attached one- and two-family residences as well as some multiple dwelling residences. The neighborhood has nearby access to the Staten Island Expressway and is within close proximity to the Verrazano Narrows Bridge. The location also has access to public transportation and neighborhood retail.

The applicant proposes to construct two buildings which will front on Fletcher Street, designed to be in context with the established character of the Rosebank neighborhood. The architecture has been informed by some of the community’s older residences which are sited with a traditional broadside orientation, modest in size with open space on all sides. The buildings are designed to lessen energy needs and reduce pollution and have basic rainwater harvesting systems for use in the gardens. The gardens will be solar-ready to be fitted with photovoltaic solar panels. The buildings will also include organic, high quality insulation, super-efficient HVAC system, and low VOC flooring and paint.

In response to Board concerns at hearings about different potential uses for the subject site, the applicant presented an as of right plan for the subject site without a waiver to build in the privately owned, undeveloped portion of the mapped street. The resulting building would be significantly smaller than the applicant’s proposed plan, thereby reducing the building’s footprint by approximately

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# MINUTES

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50 percent.

The Board notes that, pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements. The Board notes that the bulk waivers proposed shall only be as necessary to address non-compliance resulting from the location of the development within and outside the unimproved streets, 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.

By letter dated April 1, 2020, the Fire Department states that it has reviewed the latest submitted plan for the sprinklering of the two-family residences and has no objection to this application.

By letter dated December 31, 2019, the Department of Environmental Protection stated that it has reviewed the plans for construction in the bed of a mapped Fletcher Street and has no objections to the proposed GCL-35 application.

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, dated June 4, 2019, acting on DOB New Building Application Nos. 520366247 and 520366238, under the powers vested in the Board by Section 35 of the General City Law, to *permit* construction within the bed of a mapped, but unimproved street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 6, 2020”- One (1) sheet and “Received April 7, 2020” – One (1) sheet; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. Nos. 2019-185-A & 2019-186-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York, resulting from an outbreak of novel coronavirus disease, by February 21, 2025;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 18, 2020.

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## 2019-303-A

APPLICANT – Sheldon Lobel, P.C. for 55 Eckford Acquisition LLC, lessee.

SUBJECT – Application December 10, 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 zoning district regulations. M1-2/R6B, R6A and MX-8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, Block 2698, Lot 32, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for the renewal of building permits associated with a previously granted common law vested rights application, which reinstated Department of Buildings (“DOB”) Permit No. 301675319-01-NB and all related permits necessary to complete construction for a period that expired on July 22, 2016.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2020, and then to decision on May 18, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area.

The Premises are located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue, partially within an R6B/M1-2 (MX-8) zoning district and partially within an R6A/M1-2 (MX-8) zoning district, within a Special Mixed Use District, in Brooklyn. With approximately 98 feet of frontage along Eckford Street, 100 feet of depth, and 10,376 square feet of lot area, the Premises are improved with a partial steel frame for the 12 stories of the proposed 12-story residential building (the “Building”).

The site was formerly located within an R6/M1-1 zoning district. The applicant states that Permit No. 301675319-01-NB, the new building permit authorizing construction of the Building in accordance with R6/M1-1 zoning district regulations (the “Permit”), was issued by DOB on March 22, 2004, and all excavation and foundation work, as well as steel work for the first through third floors, was completed prior to May 11, 2005. On May 11, 2005 (the “Enactment Date”), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning amendment (C 050111(A) ZMK), which changed the zoning for the Premises from an R6/M1-1 zoning district to partially R6B/M1-2 (MX-8) and partially R6A/M1-2 (MX-8). While the completion of 100 percent of the Building’s foundations allowed construction to proceed as of right under Z.R. § 11-331, due to financial hardship, the applicant did not complete construction within two years and obtain

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certificates of occupancy for the Building, as required by Z.R. § 11-332, and the Permit lapsed by operation of law.

The Board has exercised jurisdiction over the Premises since October 23, 2007, when, under the BSA Cal. No. 157-07-BZ, the Board granted an extension of time to complete construction and obtain a certificate of occupancy pursuant to Z.R. § 11-332, for a term of two years, to expire on October 23, 2009. In its grant, the Board recognized that the Permit was lawfully issued, and that, subsequent to such issuance, the applicant had completed 100 percent of the foundation, the steel frame for six of the 12 stories of the Building, and concrete slab floors for stories one through six. Additionally, the Board recognized that during that same time period 17 percent of the expenditures for the development had been made. However, as of October 23, 2009, construction had not been completed.

As such, on April 27, 2010, under BSA Cal. No. 157-07-BZY, the Board granted an additional extension of time to complete construction and obtain a certificate of occupancy, for a term of two years, to expire on April 27, 2012. The applicant notes that, subsequent to the 2007 grant, due to the financial crisis, no additional construction was completed and no additional expenditures were made. Thus, the Board's 2010 grant was based on the same amount of construction and expenditures as the 2007 grant. However, as of April 27, 2012, 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.

On July 22, 2014, under BSA Cal. No. 103-14-A, the Board recognized a common law vested right to complete construction and obtain a certificate of occupancy and renewed the Permit, as well as all related permits for various work types, either already issued or necessary to complete construction, and extended the time to complete construction and obtain a certificate of occupancy for two years, to expire on July 22, 2016. However, as of July 22, 2016, construction was not completed and a certificate of occupancy had not been issued; therefore, on that date, the Permit lapsed again. Accordingly, the applicant seeks further renewal of building permits associated with the previously granted common law vested rights application.

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. 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". 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."

As noted above, the applicant obtained a permit to construct the Building and the Board has recognized that substantial construction was performed and substantial expenditures were made subsequent to the issuance of the Permit and prior to the Enactment Date.

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 and completed steel framing for the first through third floors.

The applicant represents that the total expenditure paid toward the construction of the Building prior to the Board's renewal of the Permit is approximately over \$1,379,000, and 33 percent of the development of the Premises was completed by July 22, 2016.

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. The applicant additionally represents that serious loss would occur absent an extension of time to complete construction because the cost of redesigning and reconstruing the building plus the value of the floor area lost if the proposed building were to be modified to comply with the existing zoning regulations, which the Board originally found serious loss when it was noted that the third owner would incur a loss of \$2,469,352, is at least \$4,033,100, which considers design fees and revenue lost based on current market value of the additional floor area, as the difference in floor area between the existing zoning district and the prior zoning district is approximately 3,471 square feet, totally a potential loss of approximately \$3,818,100. Thus, the applicant states that it would suffer a serious loss if the site was required to comply with the R6/M1-1 district regulations. The Board agrees that complying with the R6/M1-1 district regulations would result in a serious economic loss for the applicant.

*Putnam*, further, holds that the following factors are relevant in determining whether a common law vested right has lapsed: (1) abandonment, including the intent to abandon and an overt act, or some failure to act, implying that the owner neither claims nor retains any interest in the subject matter of the abandonment; (2) recoupment by the owner of all or part of his financial expenditures on the property without completing construction; and (3) the extent to which considerations of public safety, health and welfare indicate that enforcement of present zoning regulations would provide an overriding benefit to the public

The applicant states that it has not demonstrated an

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intent of either the applicant or the applicant's predecessor-in-interest to abandon the vested rights accruing to the Premises. Specifically, the applicant represents that there were no statements made to neighbors, no contrary applications brought at DOB or other agencies, and no other "affirmative action" taken that would indicate that either the applicant or the applicant's predecessor-in-interest intended anything other than to move towards a completion of the Building. Further, the applicant is working toward addressing DOB violations issued to the Premises, which would otherwise preclude the issuance of building permits. Nor does anything in the record indicate abandonment on the property owner's part or that recoument has occurred.

The Board notes that, given the history of financial difficulties in connection with the development of the Premises, it is foreseeable that the Premises may become a stalled site, further impeding construction progress, and does not hold such against the applicant as not having performed substantial construction.

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.

Based upon its review of the record, the Board finds that a four 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. 301675319-01-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 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 January 31, 2025.

(DOB Application No. 301675319)

Adopted by the Board of Standards and Appeals, May 18, 2020.

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## **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 September 15-16, 2020, at 10 A.M. for adjourned hearing.

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## **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 August 10-11, 2020, at 10 A.M. for continued hearing.

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## **2018-190-A**

APPLICANT – Richard Lobel, P.C., for 18 Union St. LLC, owner.

SUBJECT – Application November 26, 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 R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district.

PREMISES AFFECTED – 32-18 Union Street, Block 4954, Lot 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M. for continued hearing.

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## **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 July 13-14, 2020, at 10 A.M. for continued hearing.

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## **2019-82-A**

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019 – 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).

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C4-2 Special St. George /Upland Sub district.  
PREMISES AFFECTED – 430 St. Marks Place, Block 16,  
Lot 120, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M. for continued hearing.

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**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 54<sup>th</sup> Street aka 5401 3<sup>rd</sup> Avenue, Block 822, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 10, 2019, acting on Department of Buildings Alteration Type I Application No. 321999236, reads in pertinent part:

“Existing Mezzanine Level enlargement for a new non-conforming use is contrary to Zoning Resolution Sections 11-412 and 11-413 and requires a Special Permit from the Board of Standards and Appeals pursuant to Zoning Resolution Section 73-53.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures, reinstatement of a variance pursuant to Z.R. 11-411, previously granted by the Board, that expired on June 23, 1991, and the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds, and a reinstatement of a variance, pursuant to Z.R. §§ 73-53 and 73-03.

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 7, 2020, and then to decision on May 18, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 7, Brooklyn, recommends approval of this application.

The Premises are located on the southeast corner of 54th Street and Third Avenue, within an R6B zoning district, in Brooklyn. With approximately 100 feet of

frontage along 54th Street, 100 feet of frontage along Third Avenue, 10,017 square feet of lot area, the Premises are occupied by an existing one-story, plus cellar and mezzanine, building used for storage, warehouse and assembly of venetian blinds, containing 11,273 square feet of floor area.

The Board has exercised jurisdiction over the Premises since June 18, 1957, when, under BSA Cal. No. 539-56-BZ, the Board granted a variance to permit the change of use of an existing building, from a public garage to wine bottling and storage of finished products, for a term of ten years, on condition that the building not be increased in height or area and in all other respects comply with all laws, rules, and regulations applicable thereto; such fire-fighting appliances be maintained as the Fire Commissioner directs; the front of the building be painted and no additional sign be erected advertising the proposed use; if and when the proposed widening of Gowanus Parkway and Third Avenue is carried out and if the northernly wall of the building becomes the wall on the new building line, such wall also be painted; all permits be obtained, all work completed, and a certificate of occupancy be obtained within one year, by June 18, 1958.

On June 18, 1957, under BSA Cal. No. 540-56-A, the Board modified a decision of the borough superintendent, regarding second means of egress from the second floor, on condition that the second floor referred to, actually as a mezzanine, not be extended in area, and the means of reaching the first floor from such mezzanine be maintained in accordance with plans showing such conditions as filed with BSA Cal. No. 539-56-BZ.

On October 10, 1967, under BSA Cal. No. 539-56-BZ, the Board amended the variance to extend the term for five years, to expire June 18, 1972, on condition that loading, unloading, or storage of material not be permitted on the sidewalk; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On May 4, 1971, under BSA Cal. No. 539-56-BZ, the Board further amended the variance to extend the term for ten years, to expire on May 4, 1981, on condition that the building may be altered, rearranged, and used substantially as shown on revised drawings of proposed 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.

On December 21, 1976, under BSA Cal. No. 426-76-BZ, the Board permitted the installation of a roof sign on the existing building on condition that all work substantially conform to drawings filed with the application; the sign be limited to a business sign only; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year, by December 21, 1977.

On February 21, 1978, under BSA Cal. No. 426-76-BZ, the Board granted an extension of time to complete construction and amendment on condition that the roof sign may be redesigned substantially as shown on revised drawings of proposed conditions filed with the application

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all work be completed within one year, by February 21, 1979; and, other than as amended the resolution be complied with in all respects.

On June 23, 1981, under BSA Cal. No. 226-81-BZ, the Board, pursuant to Z.R. §§ 11-411 and 11-413, granted an extension of term of the variance for the existing one-story and mezzanine building and the addition to the warehouse and storage to include the assembly of venetian blinds on condition that all work substantially conform to drawings filed with the application; the term be limited to ten years; the façade of the structure be properly cleaned and maintained; the roof business sign may remain so long as it is maintained accessory to an active functioning occupancy within the building for the use indicated on said sign; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year, by June 23, 1982.

On May 11, 1982, under BSA Cal. No. 426-76-BZ, the Board amended the variance to legalize the addition of a digital clock to the roof sign, substantially as shown on revised drawings of proposed conditions, on condition that other than as amended the resolution be complied with in all respects.

The term of the variance having expired, the applicant now seeks a reinstatement. Because this application was filed more than ten years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(4)(i), of the Board's Rules to permit the filing of this application. The applicant submitted copies of invoices for window products and utility bills to continuously cover the period from 1991 through the filing of the application.

The applicant further seeks to legalize an enlargement to the mezzanine, to 2,329 square feet of floor area. Because Z.R. § 11-412 prohibits structural alterations, extensions or enlargements for a new non-conforming use authorized under the provisions of Section 11-413, the applicant also seeks a special permit, pursuant to Z.R. § 73-53, to legalize such enlargement.

The applicant states that the building is occupied as storage, warehouses, and offices, and zoning Use Group ("UG") 17 Assembly of Venetian Blinds, two loading and unloading births. The proposed enlargement will legalize approximately 1,844 gross square feet to be used for storage. The enlargement would not be permitted as-of-right because the use is not permitted in a residence district.

As to the prerequisites for the subject special permit, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to Z.R. §§ 11-412, 43-121 or 72-21; and, that the subject use is listed in UG 17, not UG 18.

The permitted enlargement may be the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or 2,500 square feet. The applicant proposes to legalize the enlarged mezzanine to 2,403 gross square feet, from 559 gross square feet, in compliance with the limitation. The applicant represents that the enlargement is an entirely enclosed building, and that all activities generated by the enlargement (storage) shall be within the building. The applicant states that the accessory storage in the enlarged portion has no applicable performance standards as the parts used in this assembly process are not produced, fabricated or manufactured at the Premises. The applicant states that no open uses of any kind are proposed. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within 30 feet of a rear lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within eight feet of a side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no open uses of any kind are proposed within eight feet of the side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement is proposed within eight feet of the lot line that coincides with a side lot line of a zoning lot in a residence district. Additionally, no side yard is required in the subject R6B district.

The applicant represents that the enlargement, which will be used for storage, will not generate a significant increase in vehicular or pedestrian traffic, nor will cause any congestion in the surrounding area, as the enlargement used for storage is not publicly accessible and, as it has existed, has not generated an increase in traffic. As to potential parking impacts, the applicant states that, as the storage is used only by existing workers at the Premises, the enlargement will not generate any additional parking requirements. The applicant also notes that there will be no yards or loading berths and states that the proposed enlargement will not alter the essential character of the neighborhood or district in which the use is located, nor impair the future use or development of the surrounding area.

Based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use are outweighed by the advantages to be derived by the community. The proposed project will not interfere with any pending public improvement project. Therefore, the Board determines that the evidence in the record supports the findings required to be made under Z.R. §§ 73-53 and 73-03.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA055K, dated January 8, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special

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permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-53 and 73-03 to legalize the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 6, 2020” - eleven (11) sheets; and *on further condition*:

THAT the term shall expire on May 18, 2030;

THAT the façade of the structure shall be maintained properly cleaned;

THAT the roof business sign may remain so long as it is accessory to the active use in the building;

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. 2020-2-BZ and BSA Cal. No. 2017-265-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 February 7, 2022;

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

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

THAT the Department of Buildings must 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 18, 2020.

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## 2018-91-BZ

### CEQR #18-BSA-136M

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** – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 18, 2018, acting on DOB Alteration Type I Application No. 101395250, 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.”

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

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2020, and then to decision on May 18, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 1, Manhattan, recommends approval of this application. The Board was also in receipt of one form letter in support of this application.

The Premises are bounded by Worth Street to the south and Leonard Street to the north, between Broadway and Church Street, within a C6-2A zoning district and Tribeca East Historic District, in Manhattan. With approximately 48 feet of frontage along Worth Street, 87 feet of frontage along Leonard Street, 8,718 square feet of lot area, the Premises are occupied by an existing six-story plus cellar, sub-cellar and mezzanine mixed use residential and commercial building.

The Board has exercised jurisdiction over the Premises since October 28, 1997, when, under BSA Cal. Nos. 174-00-BZ and 44-97-BZ, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a physical culture establishment in the sub-cellar, cellar and



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first floor of the existing five-story, cellar and sub-cellar commercial building on condition that all work substantially conform 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; fire prevention measures be installed and maintained in accordance with BSA-approved plans; a Fire Egress Easement be filed in order to provide the required secondary egress indicated on the BSA-approved plans; the special permit be limited to a term of ten years, to expire on October 28, 2007; 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., substantial construction be completed by October 28, 2001.

On August 24, 2010, under BSA Cal. Nos. 44-97-BZ and 174-00-BZ, the Board waived its Rules of Practice and Procedures and amended the resolutions to extend the term for ten years, to expire on October 28, 2017, and to legalize interior modifications, on condition that all work substantially conform to plans as they apply to the objection, filed with the application; the term of the grant expire on October 28, 2017; the above 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, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The Board notes that its determination is also subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 6,291 square feet of floor space on the sub-cellar level with areas for restrooms and locker rooms; 8,407 square feet of floor space on the cellar level with areas for weights, fitness, exercise machines and aerobics; 4,784 square feet of floor area on the first floor with areas for exercise machines; and, 670 square feet of floor area on the mezzanine with office space. The PCE began operation on June 16, 2014, as

“Crunch,” with the following hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m.; Saturday, from 7:00 a.m. and 9:00 p.m., and Sunday, 7:00 a.m. to 8:00 p.m.

The applicant states that, while the PCE will be located within a mixed-use building, mostly in the cellar, sound attenuation measures are maintained within the PCE space to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces. These measures include rubber floor matting, masonry walls with an STC rating of 45 Dbl or less, walls separating the PCE from the first floor and other public areas with four layers of gypsum board with sound attenuating blanket insulation, and insulation of the first floor PCE space with sound attenuating blankets installed along sound attenuating board, with isolating clips and two layers of gypsum board. 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 has operated continuously at the subject site, largely without incident, since 1997. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area. The applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is located in an area that has been used for PCE use for over 20 years and represents that there have been no complaints regarding the current PCE operation. The applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space.

By letter dated October 26, 2019, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler), which has been tested and witnessed by the Fire Department as per their rules and regulations. The Premises are also protected by a fire alarm system that has been tested by the Fire Department. The Bureau’s Licensed Public Place of Assembly Unit has inspected the PCE and found it to be in compliance with all applicable rules and regulations for Place of Assembly occupancy. Based on the foregoing, the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

By Certificate of No Effect (“CNE”) CNE 18-2663, issued February 26, 2016, the New York City Landmarks Preservation Commission approved work consisting of the installation of a sign in connection with the PCE.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the

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community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project. Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03.

The project is classified as an unlisted action pursuant to Section 617.26 NYCRR. 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. 18BSA136M, dated February 24, 2020. The EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

Based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on portions of the first floor, mezzanine, cellar and sub-cellar, is appropriate, with certain conditions as set forth below. 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 Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-2A zoning district, and in the Tribeca East Historic District, the operation of a physical culture establishment on portions of the first floor, mezzanine, cellar and sub-cellar of an existing six-story plus cellar, sub-cellar and mezzanine mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 5, 2020”- six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 16, 2024;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-91-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 January 8, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, May 18, 2020.

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**2020-2-BZ**

**CEQR #20-BSA-055K**

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application January 8, 2020 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R6B zoning district.

PREMISES AFFECTED – 318-320 54<sup>th</sup> Street (aka 5401 3<sup>rd</sup> Avenue) Block 822, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 10, 2019, acting on Department of Buildings Alteration Type I Application No. 321999236, reads in pertinent part:

“Existing Mezzanine Level enlargement for a new non-conforming use is contrary to Zoning Resolution

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Sections 11-412 and 11-413 and requires a Special Permit from the Board of Standards and Appeals pursuant to Zoning Resolution Section 73-53.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures, reinstatement of a variance pursuant to Z.R. 11-411, previously granted by the Board, that expired on June 23, 1991, and the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds, and a reinstatement of a variance, pursuant to Z.R. §§ 73-53 and 73-03.

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 7, 2020, and then to decision on May 18, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 7, Brooklyn, recommends approval of this application.

The Premises are located on the southeast corner of 54th Street and Third Avenue, within an R6B zoning district, in Brooklyn. With approximately 100 feet of frontage along 54th Street, 100 feet of frontage along Third Avenue, 10,017 square feet of lot area, the Premises are occupied by an existing one-story, plus cellar and mezzanine, building used for storage, warehouse and assembly of venetian blinds, containing 11,273 square feet of floor area.

The Board has exercised jurisdiction over the Premises since June 18, 1957, when, under BSA Cal. No. 539-56-BZ, the Board granted a variance to permit the change of use of an existing building, from a public garage to wine bottling and storage of finished products, for a term of ten years, on condition that the building not be increased in height or area and in all other respects comply with all laws, rules, and regulations applicable thereto; such fire-fighting appliances be maintained as the Fire Commissioner directs; the front of the building be painted and no additional sign be erected advertising the proposed use; if and when the proposed widening of Gowanus Parkway and Third Avenue is carried out and if the northernly wall of the building becomes the wall on the new building line, such wall also be painted; all permits be obtained, all work completed, and a certificate of occupancy be obtained within one year, by June 18, 1958.

On June 18, 1957, under BSA Cal. No. 540-56-A, the Board modified a decision of the borough superintendent, regarding second means of egress from the second floor, on condition that the second floor referred to, actually as a mezzanine, not be extended in area, and the means of reaching the first floor from such mezzanine be maintained in accordance with plans showing such conditions as filed with BSA Cal. No. 539-56-BZ.

On October 10, 1967, under BSA Cal. No. 539-56-BZ, the Board amended the variance to extend the term for five years, to expire June 18, 1972, on condition that loading, unloading, or storage of material not be permitted on the sidewalk; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On May 4, 1971, under BSA Cal. No. 539-56-BZ, the Board further amended the variance to extend the term for ten years, to expire on May 4, 1981, on condition that the building may be altered, rearranged, and used substantially as shown on revised drawings of proposed 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.

On December 21, 1976, under BSA Cal. No. 426-76-BZ, the Board permitted the installation of a roof sign on the existing building on condition that all work substantially conform to drawings filed with the application; the sign be limited to a business sign only; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year, by December 21, 1977.

On February 21, 1978, under BSA Cal. No. 426-76-BZ, the Board granted an extension of time to complete construction and amendment on condition that the roof sign may be redesigned substantially as shown on revised drawings of proposed conditions filed with the application all work be completed within one year, by February 21, 1979; and, other than as amended the resolution be complied with in all respects.

On June 23, 1981, under BSA Cal. No. 226-81-BZ, the Board, pursuant to Z.R. §§ 11-411 and 11-413, granted an extension of term of the variance for the existing one-story and mezzanine building and the addition to the warehouse and storage to include the assembly of venetian blinds on condition that all work substantially confirm to drawings filed with the application; the term be limited to ten years; the façade of the structure be properly cleaned and maintained; the roof business sign may remain so long as it is maintained accessory to an active functioning occupancy within the building for the use indicated on said sign; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year, by June 23, 1982.

On May 11, 1982, under BSA Cal. No. 426-76-BZ, the Board amended the variance to legalize the addition of a digital clock to the roof sign, substantially as shown on revised drawings of proposed conditions, on condition that other than as amended the resolution be complied with in all respects.

The term of the variance having expired, the applicant now seeks a reinstatement. Because this application was filed more than ten years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(4)(i), of the Board’s Rules to permit the filing of this application. The applicant submitted copies of invoices for window products and utility bills to continuously cover the period from 1991 through the filing of the application.

The applicant further seeks to legalize an enlargement to the mezzanine, to 2,329 square feet of floor area. Because Z.R. § 11-412 prohibits structural alterations, extensions or enlargements for a new non-conforming use authorized

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under the provisions of Section 11-413, the applicant also seeks a special permit, pursuant to Z.R. § 73-53, to legalize such enlargement.

The applicant states that the building is occupied as storage, warehouses, and offices, and zoning Use Group (“UG”) 17 Assembly of Venetian Blinds, two loading and unloading births. The proposed enlargement will legalize approximately 1,844 gross square feet to be used for storage. The enlargement would not be permitted as-of-right because the use is not permitted in a residence district.

As to the prerequisites for the subject special permit, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to Z.R. §§ 11-412, 43-121 or 72-21; and, that the subject use is listed in UG 17, not UG 18.

The permitted enlargement may be the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or 2,500 square feet. The applicant proposes to legalize the enlarged mezzanine to 2,403 gross square feet, from 559 gross square feet, in compliance with the limitation. The applicant represents that the enlargement is an entirely enclosed building, and that all activities generated by the enlargement (storage) shall be within the building. The applicant states that the accessory storage in the enlarged portion has no applicable performance standards as the parts used in this assembly process are not produced, fabricated or manufactured at the Premises. The applicant states that no open uses of any kind are proposed. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within 30 feet of a rear lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement that exceeds 16 feet above curb level is within eight feet of a side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no open uses of any kind are proposed within eight feet of the side lot line that coincides with a rear lot line of a zoning lot in a residence district. The applicant states that no portion of the proposed enlargement is proposed within eight feet of the lot line that coincides with a side lot line of a zoning lot in a residence district. Additionally, no side yard is required in the subject R6B district.

The applicant represents that the enlargement, which will be used for storage, will not generate a significant increase in vehicular or pedestrian traffic, nor will cause any congestion in the surrounding area, as the enlargement used for storage is not publicly accessible and, as it has existed, has not generated an increase in traffic. As to potential parking impacts, the applicant states that, as the storage is used only by existing workers at the Premises, the enlargement will not generate any additional parking

requirements. The applicant also notes that there will be no yards or loading berths and states that the proposed enlargement will not alter the essential character of the neighborhood or district in which the use is located, nor impair the future use or development of the surrounding area.

Based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use are outweighed by the advantages to be derived by the community. The proposed project will not interfere with any pending public improvement project. Therefore, the Board determines that the evidence in the record supports the findings required to be made under Z.R. §§ 73-53 and 73-03.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA055K, dated January 8, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z,R, §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-53 and 73-03 to legalize the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 6, 2020” - eleven (11) sheets; and *on further condition*:

THAT the term shall expire on May 18, 2030;

THAT the façade of the structure shall be maintained properly cleaned;

THAT the roof business sign may remain so long as it is accessory to the active use in the building;

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. 2020-2-BZ and BSA Cal. No. 2017-265-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 February 7, 2022;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other

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relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2020.

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**2017-317-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district.

PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to July 20-21, 2020, at 10 A.M. for adjourned hearing.

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**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 July 20-21, 2020, at 10 A.M. for continued hearing.

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**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 23-142 (open space, lot coverage and FAR) and 23-461(a) (side yard). R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2311 East 4<sup>th</sup> Street, Block 7156, Lot 58, 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 June 1-2, 2020, at 10 A.M. for decision, hearing closed.

**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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Laid over to June 1-2, 2020, at 10 A.M. for continued hearing.

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**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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Laid over to June 1-2, 2020, at 10 A.M. for continued hearing.

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
MAY 18-19, 2020, 2:00 P.M.**

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

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**ZONING CALENDAR**

**2019-263-BZ**

APPLICANT – Eric Palatnik, P.C., for Andrew Lester,  
owner.

SUBJECT – Application September 11, 2019 – Special  
Permit (§73-243) to permit an eating and drinking  
establishment (Starbucks) with an accessory drive-thru  
contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block  
2102, Lot 120, Borough of Richmond.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to July 20-  
21, 2020, at 10 A.M. for continued hearing.

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**2019-266-BZ**

APPLICANT – Law Office of Steven Simicich, for 1492 &  
1498 Clove Road, LLC, owner.

SUBJECT – Application September 18, 2019 – Special  
Permit (§73-126) to permit the enlargement of an  
ambulatory diagnostic or treatment care facility which  
exceeds 1,500 square feet, located within a lower density  
growth management area, contrary to ZR §22-14. R3X  
LDGMA zoning district.

PREMISES AFFECTED – 1498 Clove Road, Block 661,  
Lot 19, Borough of State Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to July 20-  
21, 2020, at 10 A.M. for continued hearing.

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**2020-27-BZ**

APPLICANT – Sheldon Lobel, P.C., for Civil Concord  
Avenue, LLC, owner.

SUBJECT – Application March 27, 2020 – Special Permit  
(§73-19) to permit the operation of a High School (UG 3)  
contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 403 Concord Avenue, Block  
02573, Lot 87, Borough of the Bronx.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to June 15-  
16, 2020, at 10 A.M. for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, Nos. 22-23

June 12, 2020

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2-10-BZ & 2019-193-BZ	310 East 14 <sup>th</sup> Street, Manhattan
2019-203-BZ	144-43 Farmers Boulevard, Queens



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# DOCKETS

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New Case Filed Up to June 1-2, 2020

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**2020-43-BZ**

982 39th Street, Block 5583, Lot(s) 0068, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the legalization of 2 residential units on the 2nd and 3rd floors of an existing 3 story building contrary to ZR §42-10. M1-2 zoning district. M1-2 district.

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**2020-44-BZ**

2228 Gerritsen Avenue, Block 7370, Lot(s) 0010, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with accessory uses contrary to ZR §32-10. C2-2/R4 zoning district. R4/C2-2 district.

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**2020-45-BZ**

135-35 Northern Boulevard, Block 4958, Lot(s) 0038, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR § 33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-33(b)(3) and ZR 33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District (ZR §61-21); Amendment of a previously approved Special Permit (§73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District. R6/C2-2 district.

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**2020-46-A**

12-14 East 48th Street, Block 1283, Lot(s) 0011, Borough of **Manhattan, Community Board: 5**. Extension of Time to Complete Construction of a new building on the site as a new temporary certificate of occupancy for the entire building may not be obtained by January 31, 2021. C5-2.5 district.

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

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# CALENDAR

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## REGULAR MEETING

**JULY 13-14, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, July 13, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday July 14, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER 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**

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## APPEALS CALENDAR

### 2020-11-A

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

SUBJECT – Application January 17, 2020 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 301 Park Avenue, Block 1304, Lot(s) 1001-1004, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## ZONING CALENDAR

### 2019-261-BZ

APPLICANT – Law Office of Lyra J. Altman, for 956-964 LLC, owner.

SUBJECT – Application September 10, 2019 – 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.

PREMISES AFFECTED – 960 East 23<sup>rd</sup> Street, Block 7586, Lot71, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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### 2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMPSRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – Variance (§72-21) to permit the legalization of retail (Use Group 6) on the cellar and ground floors of an existing building contrary to ZR §42-14(D)(2)(b). M1-5B (SoHo Cast Iron Historic District).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Margery Perlmutter, Chair/Commissioner*

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
JUNE 1-2, 2020, 10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**58-30-BZ**

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens  
**COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M. for continued hearing.

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**825-86-BZ**

APPLICANT – Akerman, LLP, for Ban Realty LLC, owner.  
SUBJECT – Application July 27, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial banquet hall (UG 9) and eating and drinking establishment (UG 6) contrary to zoning use regulations which expired on June 30, 2017: Amendment to permit the extension of the banquet hall by approximately 1,104 square feet and the addition of two new mezzanines for a total of 2,461 square feet, permit an increase in the maximum permitted occupancy from 850 people to a maximum occupancy of 1,008 people and propose to reduce the parking from 75 to 65 attendant parking spaces; Waiver of the Rules. R5 Zoning District.  
PREMISES AFFECTED – 1703 Bronxdale Avenue, Block 4045, Lot 29, Borough of Bronx.

**COMMUNITY BOARD # 11BX**

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M. for adjourned hearing.

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**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 86<sup>th</sup> Street, Block 1531, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M. for continued hearing.

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**42-97-BZ**

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

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

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

**COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M. for continued hearing.

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**10-99-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC dba New York Sports Club, lessee.

SUBJECT – Application November 20, 2019 – 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 October 26, 2019. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, Block 2705, Lot 135, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to June 15-16, 2020, at 10 A.M. for continued hearing.

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**33-99-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RCPI Landmark Properties LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application November 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expired on January 11, 2020. C5-2.5 and C5-3 Midtown Special Purpose district. Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 630 5<sup>th</sup> Avenue aka 40-60 Rockefeller Plaza, 31-41 W. 50<sup>th</sup> Street, 32-40 W. 51<sup>st</sup> Street, Block 1266, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Perlmutter, Vice-Chair Chanda,

# MINUTES

Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 13-14, 2020, at 10 A.M. for decision, hearing closed.

## 72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for PGREF/1633 Broadway Tower, L.P., owner; Equinox 50<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expires on January 11, 2020. C6-7 Midtown Special Purpose District.

PREMISES AFFECTED – 1633 Broadway, Block 1022, Lot 43, 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 July 13-14, 2020, at 10 A.M. for decision, hearing closed.

## 58-13-A

APPLICANT – Law Office of Jay Goldstein, for Sylvaton Holdings LLC, owner.

SUBJECT – Application December 23, 2019 – Amendment of a previously approved application permitting the development of a 3-story residential building located within the bed of a mapped street contrary to General City Law §35. R4 and M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place (28, 32 & 35 Sylvaton Terrace), Block 2827, Lot(s) 200, 203, 205, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to August 10, 2020, at 10 A.M. for continued hearing.

## 175-14-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, for 1162 Broadway LLC, owner.

SUBJECT – Application May 24, 2019 – Amendment of a previously approved Variance (§72-21) which approved the construction a new 14-story hotel building. The amendment seeks to change the use of the proposed building from hotel use to office use; Extension of Time to Complete Construction which expired on March 25, 2019; Waiver of the Board’s Rules. M1-6 Madison Square North Historic District.

PREMISES AFFECTED – 1162 Broadway, Block 829, Lot 28, 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 July 13-14, 2020, at 10 A.M. for decision, hearing closed.

## APPEALS CALENDAR

### 2018-68-A thru 2018-90-A

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

SUBJECT – Application May 14, 2018 – Proposed construction of 23 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district.

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

### COMMUNITY BOARD #5SI

**ACTION OF THE BOARD** – Laid over to October 27-28, 2020, at 10 A.M. for continued hearing.

### 2019-68-A

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

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

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

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to August 10, 2020, at 10 A.M. for continued hearing.

## ZONING CALENDAR

**CORRECTION: This resolution adopted on June 1, 2020, under Calendar No. 2019-22-BZ, is hereby corrected to read as follows:**

### 2019-22-BZ

#### CEQR #19-BSA-080Q

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-

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22). R3X zoning district.  
PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, Block 1106,  
Lot 44, Borough of Queens.

## COMMUNITY BOARD #3Q

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

### THE VOTE –

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

Negative:.....0

### THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 25, 2019, acting on New Building Application No. 421315623, reads in pertinent part:

“Objections:

1. ZR 23-142: Proposed floor area ratio exceeds maximum allowable.
2. ZR 23-461: Proposed building does not comply with side yard requirements.
3. ZR 22-12(a)(1): Proposed semi-detached residence not permitted in R3X district.
4. ZR 25-22: Proposal does not comply with parking requirements.”

This is an application for an amendment a variance, previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the construction of a semi-detached single-family home contrary to use, FAR, side yards, and parking as per Z.R. §§ 23-141, 23-461, and 25-22. Since the initial grant of this variance, the Premises have been rezoned from an R3-2 zoning district to an R3X zoning district.

A public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, with continued hearings on February 11, 2020, March 17, 2020, and April 2, 2020 and then to decision on June 1, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 3, Queens, recommends approval of this application on condition that the proposed one-family dwelling’s front yard may not be paved over to prohibit open green space. The Board also received one form letter in support of this application.

The Premises are located on the east side of 95th Street, between 24th Avenue and 25th Avenue, within an R3X zoning district, in Queens. With approximately 20 feet of frontage along 95th Street, 95 feet of depth, 1,847 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since February 5, 2013, when, under BSA Cal. No. 147-11-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 district, the construction of a new single-family semi-detached residence that exceeds the permitted FAR and does not provide the required side yards or parking, contrary to Z.R. §§ 23-141, 23-461, and 25-22, on condition that the work conform to drawings filed with the application; the parameters of the proposed building be as follows: a maximum floor area of 1,263 square feet (0.68

FAR), a side yard with a minimum width of 5’-0” along the southern lot line, a front yard with a depth of 13’-0”, a rear yard with a depth of 35’-11-3/8”, a total height of 26’-6” and no parking spaces, as per the BSA-approved plans; there be no habitable room in the cellar; 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; substantial construction proceed in accordance with Z.R. § 72-23; 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.

On October 30, 2013, the Premises were rezoned from an R3-2 zoning district to an R3X zoning district which has different side yard requirements and does not permit semi-detached homes.

The applicant proposes to construct a two-story and cellar single-family, semi-detached residence which will exceed the maximum floor area ratio, does not provide the minimum side yards, and does not provide off-street parking. The maximum permitted FAR in an R3X is 0.50, and the proposed residence will have an FAR of 0.66. R3X districts only permits detached buildings with a side yard requirement of two with a total width of 10 feet. The proposed semi-detached residence will have one with a width of five feet. Accordingly, the applicant now seeks an amendment to the variance to include a waiver for use and floor area ratio, contrary to Z.R. §§ 22-12(a)(1) and 23-142.

The applicant represents this new proposal continues to meet all applicable findings because the same unique conditions exist, and the proposal continues to be in line with neighborhood character. First, this lot is exceptionally narrow as compared to the surrounding lots and an as of right development with the required front, rear and side yards is not feasible. The maximum permitted FAR would result in a single-family residence with a much smaller floor plate than the residences on similarly sized lots within 400 feet of the Premises. Since 1980, the Premises have also been the only vacant property within 400 feet. The applicant further represents that the requested variance will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare because the proposed variance seeks to permit a modest increase in the building’s bulk, allow a waiver of one of the required side yards, waive the parking requirement, and waive regulations to allow a semi-detached building, instead of a detached building.

Over the course of hearings, the Board raised concerns regarding the nature of the proposed open green space at the property, the uniqueness of the site, and the feasibility of a development with a lesser variance.

In response, the applicant represents that the paved areas at the side and rear of the property will have permeable pavers which will be used to create the pathways that connect the walkway at the front of the property to the

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side yard. The applicant also provided drawings demonstrating that a lesser variance, without a floor area waiver, would prove inadequate because the residence would not have sufficient space for a dining area and the second floor would lose a bedroom. However, the proposed building is of modest size and includes a combined living and dining area at the first floor and a third modestly sized bedroom at the second floor of the Premises.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA080Q, dated January 29, 2019.

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 February 5, 2013, so that as amended this portion of the resolution shall read: “to *permit*, within an R3X zoning district, the construction of a new single-family semi-detached residence that exceeds the permitted FAR and does not provide the required side yards or parking contrary to Z.R. §§ 22-12(a)(1), 23-142, 23-461, and 25-22; on condition that all work and site conditions shall conform to drawings filed with this application marked “Received May 14, 2020”- Ten (10) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,225.72 (0.66 FAR); a side yard with a minimum width of 5’-0” along the southern lot line; a front yard with a depth of 13’-0”; a rear yard with a depth of 36’-0”; a total height of 26’-6”, and no parking spaces, as per the BSA-approved plans;

THAT there shall be no habitable room in the cellar;

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 1, 2020.

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## 2019-26-BZ

### CEQR #19-BSA-084K

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 9, 2019, acting on DOB Alteration Type I Application No. 321773121, reads in pertinent part:

“Proposed Physical Culture Establishment use in an M1-2 District is contrary to ZR section 42-00 and is hereby referred to the Board of Standards and Appeals for a Special Permit pursuant to ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within an M1-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first, second, third, and fourth floors of a proposed four-story, plus cellar, commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, with continued hearings on February 4, 2020, and April 6, 2020, and then to decision on June 1, 2020. Community Board 6, Brooklyn, recommends approval of this application. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. The Board received one form letter in support of this application.

The Premises are located on the southeast corner of Nevins Street and Butler Street, within an M1-2 zoning district, in Brooklyn. With approximately 100 feet of frontage along Nevins Street, 140 feet frontage along Butler Street, 14,000 square feet of lot area, the Premises are occupied by an existing two-story plus cellar building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or

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restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 36,769 square feet of floor area as follows: 1,593 square feet on the first floor with the PCE entrance and storage; 13,064 square feet on the second floor with areas for climbing, open gym, locker rooms, retail, office, and storage; 13,170 square feet on the third floor with areas for climbing, fitness, yoga, restrooms, and storage; and 8,942 square feet on the fourth floor with areas for climbing, storage, and restrooms. The PCE will operate as "The Cliffs at Gowanus," with the following hours of operation: Monday through Friday, 9:00 a.m. to 12:00 a.m., and Saturday and Sunday, 9:00 a.m. to 10:00 p.m.

The applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use is consistent with the commercial uses and industrial character of the neighborhood which includes hotels, retail stores, eating and drinking establishments, and other gyms. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit.

The Department of Investigation ("DOI") has performed a background check on the corporate owner and operator of the establishment and the principals thereof and provided a complaint filed in Criminal Court of the City of New York, County of Queens, against a named principal in 2013. The principal subsequently paid a fine and received a one year provisional discharge. The Board found the charge to be unrelated to the types of offense the subject special permit was intended to prevent, to wit, houses of ill repute and, accordingly, deemed the support issued by DOI to be satisfactory.

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 a commercial building and prepared an Environmental Assessment Statement to confirm that the proposed special permit will not have any significant adverse impacts.

By letter dated February 4, 2020, the Fire Department objected to the application and states that a review of their records shows accounts for storage of trucks for fuel transport, motor vehicle repair shop, storage of combustible liquids, acetylene storage, and compressed gases. According to 2014 FC 2601.6.1, any use that stores combustible or flammable liquids and gases that has been discontinued, a "Facility Closure Report" must be filed with the Fire

Department. The Fire Department has not received such report and an inspection has been ordered to be performed; a report of findings will be submitted to the Board.

The applicant represents that the PCE will be fully sprinklered and a fire alarm system with a connection to a central monitoring station will be maintained within the PCE space.

By correspondence dated March 31, 2020, the Fire Department states that The Bureau of Fire Prevention Hazardous Control Unit and District Office inspected the Premises and obtained the "Facility Closure Report" that flammable and combustible liquids and gases have been properly removed from the site. As noted on plans filed with the Board of Standards and Appeals, a fire alarm and sprinkler systems will be provided for these premises and the PCE space. This information will be provided to the Bureau of Fire Prevention Licensed Public Place of Assembly (LPPA) unit, the Fire Alarm Inspection Unit (FAIU) and the Fire Suppression Unit (FSU), who will inspect these premises annually. Based on the forgoing 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.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 19BSA084K, received May 29, 2020. The EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts. The site has been submitted for entry into NYC Voluntary Cleanup Program ("VCP") administered by the NYC Office of Environmental Remediation ("OER"). By letter dated November 16, 2018, OER detailed the remedial action for the Premises, consisting of: 1. Preparation of a Community Protection Statement and performance of all required NYC VCP Citizen Participation activities according to an approved Citizen Participation Plan; 2. Performance of a Community Air Monitoring Program for particulates and volatile organic carbon compounds; 3. Establishment of Track 4 Site-Specific Soil Cleanup Objectives ("SCOs") for the excavation of hotspot. The remaining contaminated soils will be managed in place; 4. Site mobilization involving Site security setup, equipment mobilization, utility mark outs

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and marking & staking excavation areas; 5. Completion of a Waste Characterization Study for excavation areas. Waste characterization soil samples will be collected at a frequency dictated by disposal facility(s); 6. Excavation and removal of soil/fill for development purposes. A total of 58 8-inch diameter piles will be driven into the site for the proposed development. The cuttings or waste soil from these locations will be stockpiled or put into a container for characterization and proper disposal. One shallow hotspot area identified during the Phase II at soil boring location SB-7 will be delineated and excavated to 4-foot depth. A ramp will be cut into the existing slab and subsurface for the construction of a ramp in the southwest corner of the site; 7. Screening of removed soil/fill during intrusive work for indications of contamination by visual means, odor, and monitoring with a PID; 8. Management of removed materials will include placing the soil into roll-off boxes for temporary storage until a disposal facility is determined for final disposal; 9. Registration of tanks, if any are found, and reporting of any petroleum spills associated with UST's and appropriate closure of these petroleum spills in compliance with applicable local, State and Federal laws and regulations; 10. Transportation and off-Site disposal of all soil/fill material at licensed or permitted facilities in accordance with applicable laws and regulations for handling, transport, and disposal, and this plan. Sampling and analysis of excavated media as required by disposal facilities. Appropriate segregation of excavated media on-Site; 11. Collection and analysis of four end-point samples and one in the proposed ramp area to document residual contaminated soils; 12. The excavated areas will be backfilled with crushed stone to construction elevation; 13. Construction of an engineered composite cover consisting of a new 4-6" concrete slab with 6" granular subbase across the footprint of the new building slab. The existing concrete slab will be removed and replaced with a new slab across the entire building footprint; 14. Installation of a vapor barrier consisting of a layer of crushed stone to create the gas permeable zone, geosynthetic membrane, and the actual barrier. The vapor barrier system will consist of at least a 20-mil, W.R. Meadow Perminator EVOH or equivalent vapor barrier below the slab throughout the full building replacement slab area. All welds, seams and penetrations will be properly sealed to prevent preferential pathways for vapor migration. The vapor barrier system is an Engineering Control for the remedial action. The remedial engineer will certify in the RAR that the vapor barrier system was designed and properly installed to mitigate soil vapor migration into the building; 15. Installation of an active sub-slab depressurization system ("SSDS") consisting of two perforated PVC pipe extraction points, The SSDS design will be provided to OER for approval prior to performance of the remedial action. The active SSDS is an Engineering Control for the remedial action. The remedial engineer will certify in the RAR that the active SSDS was designed and properly installed to establish a vacuum in the gas permeable layer; 16. Installation and operation of a ventilation system for the basement or cellar capable of

exchanging four volumes of air per hour. Any cracks in the walls and floor of the basement will be sealed as well as gaps between the floor and walls; 17. Performance of all activities required for the remedial action, including acquisition of required permits and attainment of pretreatment requirements, in compliance with applicable laws and regulations; 18. Implementation of storm-water pollution prevention measures in compliance with applicable laws and regulations; 19. Submission of a Remedial Action Report ("RAR") that describes the remedial activities, certifies that the remedial requirements have been achieved, defines the Site boundaries, lists any changes from this RAWP, and describes all Engineering and Institutional Controls to be implemented at the Site; 20. Submission of an approved Site Management Plan ("SMP") in the RAR for long-term management of residual contamination, including plans for operation, maintenance, monitoring, inspection and certification of Engineering and Institutional Controls and reporting at a specified frequency; 21. A deed restriction will be placed on the property to document the installation of, and continued operation, of an active SSDS. The deed restriction can be removed if OER determines that the active SSDS has achieved its goals and is no longer warranted.

The hazardous materials section of the EAS concludes that the issuance of a certificate of occupancy for the PCE use shall be conditioned on the issuance of a Notice of Completion from OER, therefore the proposed action would not result in significant adverse environmental impacts related to hazardous materials.

By letter dated March 30, 2020, 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 impact;

By correspondence dated December 10, 2019, the New York City Department of City Planning's Waterfront and Open Space Division states that it finds the actions will not substantially hinder the achievement of any Waterfront Revitalization ("WRP") policy and hereby concurs that this action is consistent with the WRP policies.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 *permit*, on a site located within an M1-2 zoning district, the operation of a physical culture establishment on portions of the first, second, third, and fourth floors of a proposed four-story commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to



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drawings filed with this application marked “Received April 24, 2020”- fourteen (14) sheets; and *on further condition*:

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

THAT this approval of a PCE special permit is conditioned on the project property’s participation in the NYC OER Voluntary Cleanup Program;

THAT issuance of building permits for the PCE use shall be conditioned on the issuance of a decision document approving the remedial action work plan and an executed OER Voluntary Cleanup Agreement document;

THAT issuance of a certificate of occupancy for the PCE use shall be conditioned on the issuance of a notice of completion from OER;

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

THAT fire safety measures shall be installed and maintained as shown on BSA-approved drawings;

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

THAT accessibility shall be provided pursuant to the 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. 2019-26-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 January 8, 2025;

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

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

THAT the Department of Buildings must 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 1, 2020.

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## 2019-76-BZ

### CEQR #19-BSA-119K

APPLICANT – Law Office of Lyra J. Altman, for Danny Mita, owner.

SUBJECT – Application April 19, 2019 – 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. PREMISES AFFECTED – 1973 East 16<sup>th</sup> Street, Block 7295, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 27, 2019, acting on Alteration Application No. 321789329, reads in pertinent part:

- “1) Proposed enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5’0”, which is contrary to ZR Section 24-461(a) & 23-48
- 2) Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR 23-47”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R5 zoning district, the legalization and enlargement of an existing three-story single-family detached residence that does not comply with zoning regulations for side yards and rear yards, contrary to Z.R. §§ 23-461(a), 23-47, and 24-48.

A public hearing was held on this application on February 25, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 21, 2020, and then to decision on June 1, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board also received one form letter objecting to this application and citing concerns over the removal of the garage which may lead to fewer street parking options in the area.

The Premises are located on the east side of East 16th Street, between Avenue S and Avenue T, within an R5 zoning district, in Brooklyn. With approximately 30 feet of frontage along East 16th Street, 100 feet of depth, 3,000 square feet of lot area, the Premises are occupied by an existing three-story single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further

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that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a three-story detached residence with two side yards with widths of 3'-7" and 4'-9", and a rear yard with a depth of 20'-3" at the first floor and above. The applicant requests a legalization of the existing enlargement in the rear of the building and, in addition, proposes to remove the existing garage and increase the southern side yard from 4'-9" to 6'-5".

At the Premises, two side yards with minimum widths of five feet, with ten feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-461, 23-47, and 23-48.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R5 zoning district (the "Study Area"), finding that on the subject block, there are eight other single- or two-family residences with rear yards with depths less than the required 30 feet, ranging from 18 to 29 feet. The proposed enlargement includes an extension of the existing non-complying northern side yard, and, pursuant to a 1929 Belcher Hyde Desk Atlas including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance.

In response to the Board's comments at hearings, the applicant discarded plans for a further enlargement proposing to increase the home from 3,000 square feet to 3,252.26 square feet (1.09 FAR), comprised of an additional 381.87 square feet on the first floor, 548.54 square feet on the second floor, and 424.92 square feet on the third floor. Instead, the applicant requested the legalization on the first floor; removed the existing garage; and increased existing southern side yard to 6'-5" to provide the required total side yard of 10'-0".

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA119K, dated April 22, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved,* that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the legalization and enlargement of an existing three-story single-family detached residence that does not comply with zoning regulations for side yards and rear yards contrary to Z.R. §§ 23-461(a), 23-47, and 23-48; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "May 14, 2020"- thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the existing garage is to be removed, the southern side yard is to increase from 4'-9" to 6'-5" two side yards and the northern side yard is to have a minimum width of 3'-7" and the rear yard at the first floor and above with a minimum depth of 20'-3", as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-76-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by February 18, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, June 1, 2020.

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**2019-272-BZ**

**CEQR #20-BSA-034M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Layla Associates, owner; Sweat 440, lessee.

SUBJECT – Application October 7, 2019 – 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.

PREMISES AFFECTED – 600 6<sup>th</sup> Avenue (aka 63 W. 17<sup>th</sup> Street), Block 819, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 5, 2019, acting on DOB Alteration Type I Application No. 123693235, reads in pertinent part:

“Proposed Physical Culture Establishment in C6-2A zoning district is not permitted pursuant to ZR 32-10 and is referred to the Board of Standards and Appeals for special permit under ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing ten-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 21, 2020, after due notice by publication in *The City Record*, and then to decision on June 1, 2020. Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the northeast corner of Sixth Avenue and West 17<sup>th</sup> Street, within a C6-2A zoning district, in Manhattan. With approximately 92 feet of frontage along Sixth Avenue, 81 feet of frontage along West 17<sup>th</sup> Street, 7,471 square feet of lot area, the Premises are occupied by an existing ten-story plus cellar mixed-use residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter,

the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 243 square feet of floor area on the first floor with the PCE entrance and office; and 4,703 square feet of floor space on the cellar level with areas for exercise, reception, retail, storage, lockers, restrooms, and showers. The PCE began operation in October, 2019, as “Sweat 440,” with the following hours of operation: Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.

The applicant states that, while the majority of the PCE is located within the cellar, sound attenuation measures are maintained to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces, including thick turf flooring with a fleece layer is installed for attenuation, the instructors do not use microphones, and music speakers are wire mounted with a high pass cutoff to minimize low frequency sounds maintained within the PCE space. 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 the existing building and represents that PCE use will not impair the essential character of the surrounding area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and that the PCE will be an asset to the surrounding area. The applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space. By correspondence dated April 21, 2020, the Fire Department states that an application shall be filed for a Public Assembly (“PA”) permit with the Department of Buildings. The Premises have a fire suppression (standpipe and sprinkler) and fire alarm system that have been inspected by the Fire Department and have current permits. The Fire Department therefore has no objection to the application.

At hearing, the Board raised concern that the PCE use caused noise disturbance to tenants in the Premises. In response, the applicant provided a letter from the building management company stating that there have been no complaints from building tenants with respect to noise or vibration as a result of activities in the PCE.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the

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

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA034M, dated October 8, 2019.

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 the applicant has substantiated a basis to warrant exercise of discretion. The term of the special permit has been reduced to reflect the period of time the PCE operated without approval.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-2A zoning district, the operation of a physical culture establishment on portions of the cellar level and first floor of an existing ten-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 17, 2020”-four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring October 1, 2029;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-272-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 26, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, June 1, 2020.

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## 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

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 29-30, 2020, at 10 A.M. for decision, hearing closed.

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## 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 14<sup>th</sup> Street, Block 7373, Lot 78, 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 June 29-30, 2020, at 10 A.M. for decision, hearing closed.

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## 2019-202-BZ

APPLICANT – Eric Palatnik, P.C., for Jack Aini, owner.  
SUBJECT – Application August 7, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2218 East 3<sup>rd</sup> Street, Block 7129, Lot 31, 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 July 27-28, 2020, at 10 A.M. for decision, hearing closed.

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## REGULAR MEETING MONDAY-TUESDAY AFTERNOON JUNE 1-2, 2020, 2:00 P.M.

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

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## 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

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M. for adjourned hearing.

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### 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 18<sup>th</sup> Avenue, Block 5439, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to September 15-16, 2020, at 10 A.M. for adjourned hearing.

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### 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

THE VOTE TO CLOSE HEARING –

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

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Negative:.....0  
**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M. for decision, hearing closed.

## 2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.  
**COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to June 16-17, 2020, at 10 A.M. for continued hearing.

## 2019-187-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bricktown Pass LLC, owner; Furie Spa Inc., lessee.  
SUBJECT – Application July 3, 2019 – 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.  
PREMISES AFFECTED – 205 Bricktown Way, Block 7452, Lot 100, 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 June 29-30, 2020, at 10 A.M. for decision, hearing closed.

## 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

### COMMUNITY BOARD #3M

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 15-16, 2020, at 10 A.M. for decision, hearing closed.

## 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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

### COMMUNITY BOARD #3M

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 15-16, 2020, at 10 A.M. for decision, hearing closed.

## 2019-203-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to September 15-16, 2020, at 10 A.M. for adjourned hearing.

*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 24-25

June 26, 2020

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## DIRECTORY

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90-91-BZ	630-636 City Island Avenue, Bronx
247-08-BZ	3454 Nostrand Avenue, Brooklyn
2018-201-A	46 Kissel Avenue, Staten Island
2019-69-A & 2019-70-A	341 & 343 Mallory Avenue, Staten Island
2019-195-A	191 Industrial Loop, Staten Island
2019-281-A	965 Richmond Avenue, aka Forest Promenade Shopping Center, Staten Island
157-15-BZ	3925 Bedford Avenue, Brooklyn
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2019-84-BZ	107-18 70 <sup>th</sup> Road, Queens
2019-193-BZ & 2-10-BZ	218-222 Second Avenue (aka 311-315 East 13 <sup>th</sup> Street), 310 East 14 <sup>th</sup> Street (a/k/a 302 East 14 <sup>th</sup> Street, a/k/a 302-318 East 14 <sup>th</sup> Street/224-26 Second Avenue, 300 East 14 <sup>th</sup> Street, 326 East 14 <sup>th</sup> Street & 313 East 13 <sup>th</sup> Street (a/k/a 313-327 East 13 <sup>th</sup> Street, Manhattan
2019-273-BZ	139-146 West Street (90-110 Barclay Street, 88-110 Vesey Street, 206-222 Washington Street), Manhattan
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# DOCKETS

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New Case Filed Up to June 15-16, 2020  
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**2020-47-A**

4810 Beach 48th Street, Block 7035, Lot(s) 0010, Borough of **Brooklyn, Community Board: 13**. Application filed pursuant to General City Law ("GCL") 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R3-1 zoning district. R3-1 district.  
-----

**2020-48-BZ**

237-241 East 86th Street, Block 1532, Lot(s) 0016, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of a new Physical Culture Establishment (PCE), a Barry's Bootcamp fitness center, on the cellar level and ground floor of an existing 18-story, mixed residential and commercial building contrary to ZR §32-10. C2-8A zoning district. C2-8A district.  
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**2020-49-A**

38-30 28th Street, Block 00386, Lot(s) 0027, Borough of **Queens, Community Board: 1**. Extension of time to complete construction and obtain a CO of a previously granted common law vested right to construct an 8-story hotel, which expired on October 7, 2018. M1-2/R5B district.  
-----

**2020-50-BZ**

2328 Olean Street, Block 7677, Lot(s) 0078, Borough of **Brooklyn, Community Board: 14**. Special Permits 73-621 & 73-622 to permit the enlargement of an existing single-family residence, one for the portion located in a residential (R2) zoning district and one for the portion located in a residential (R3-2) zoning district. R2 and R3-2 district.  
-----

**2020-51-BZ**

95 and 105 Ridgeway Avenue, Block 2610, Lot(s) 0150, Borough of **Staten Island, Community Board: 2**. Variance §72-21 to permit the development of a self-storage warehouse (UG 16) contrary to ZR 22-10. R3-2 zoning district. M1-1 district.  
-----

**2020-52-A**

95 and 105 Ridgeway Avenue, Block 2610, Lot(s) 0150, Borough of **Staten Island, Community Board: 2**. Proposed development of a self-storage warehouse located on a site not fronting on a mapped street contrary to General City Law §36. R3-2 zoning district. M1-1 district.  
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**2020-53-BZ**

95 and 105 Ridgeway Avenue, Block 2610, Lot(s) 0150, Borough of **Staten Island, Community Board: 2**. Variance §72-21 to permit the development of a self-storage warehouse (UG 16) contrary to ZR 22-10. R3-2 zoning district. M1-1 district.  
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**2020-54-A**

95 and 105 Ridgeway Avenue, Block 2610, Lot(s) 0150, Borough of **Staten Island, Community Board: 2**. Proposed development of a self-storage warehouse located on a site not fronting on a mapped street contrary to General City Law §36. R3-2 zoning district. M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JULY 27-28, 2020, 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, July 27, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday July 28, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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### SPECIAL ORDER CALENDAR

#### 55-06-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Nadine Street, LLC, owner.

SUBJECT – Application March 12, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on May 14, 2017; Waiver of the Rules. C1-1/R3-2 (NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, Block 2242, Lot(s) 92, 93, 94, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### APPEALS CALENDAR

#### 2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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#### 2019-182-A

APPLICANT – Dominic V. DeSantis – McLaren Engineering Group, for Therese Braddick, New York City department of Parks and Recreation.

SUBJECT – Application June 27, 2019 – Variance pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, waiver of Sections G304.2, Item 6 (no new construction to be located seaward of the Mean High Tide in the V-Zone) and G304.2 Item 2 (The lowest portion of the lowest horizontal structural member of the lowest floor shall be at or above design flood elevation).

PREMISES AFFECTED – 1 Marina Road, Block 1789, Lot

65, Borough of Queens.

**COMMUNITY BOARD #3Q**

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#### 2019-282-A thru 2019-291-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cord Meyer Development, owner.

SUBJECT – Application November 8, 2019 – Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district.

PREMISES AFFECTED – 18-26 to 18-50 Bay Lane, Block 5872, Lot 102, Borough of Queens.

**COMMUNITY BOARD #7Q**

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#### 2019-295-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tarnoff, for Sutton 58 Holding Company LLC, owner.

SUBJECT – Application November 15, 2019 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58<sup>th</sup> Street, Block 1369, Lot 34, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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### ZONING CALENDAR

#### 2019-292-BZ

APPLICANT – The Law Office of Vincent L. Petraro, PLLC., for Epic Tower LLC, owner.

SUBJECT – Application November 8, 2019 – 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.

PREMISES AFFECTED – 41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of Queens.

**COMMUNITY BOARD # 7Q**

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#### 2019-298-BZ

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

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

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

**COMMUNITY BOARD #12M**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
JUNE 15-16, 2020, 10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**10-99-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC dba New York Sports Club, lessee.

SUBJECT – Application November 20, 2019 – 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 October 26, 2019. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, Block 2705, Lot 135, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, that legalized the operation of a physical culture establishment (“PCE”) and expired on October 26, 2019.

A public hearing was held on this application on June 1, 2020, after due notice by publication in *The City Record*, with a continued hearing on June 15, 2020. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The premises are located on the northwest corner of West Service Road and Wild Avenue, in an M2-1 zoning district, on Staten Island. With approximately 223 feet of frontage along West Service Road, 367 feet of frontage along Wild Avenue, 52,630 square feet of lot area, the Premises are occupied by a two-story commercial building.

The Board has exercised jurisdiction over the Premises since October 26, 1999, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a PCE on the first and second floors 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 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 term of the special permit be for ten years, to expire on October 26, 2009; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, a new certificate of occupancy be obtained within one year of the grant.

On March 1, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the special permit to extend the term for a period of ten years, to expire on October 26, 2019, on condition that the use and operation of the site substantially conform to BSA-approved plans associated with the prior approval; the term of the grant expire on October 26, 2019; 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.

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

By letter, dated June 2, 2020, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, June 15, 2020.

**528-71-BZ**

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

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board’s Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board’s resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory  
PREMISES AFFECTED – 133-40 150<sup>th</sup> Street, Block 12116, Lot 0001, Borough of Queens.

**COMMUNITY BOARD # 12Q**

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M., for continued hearing.

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# MINUTES

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## 90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming uses with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment proposes to occupy a 1,576 square foot retail store with a new eating and drinking establishment, divide an existing residential dwelling into two dwelling units and allow 35 accessory attended parking spaces in the rear; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for adjourned hearing.

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## 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

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 2018-201-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Elbi Cespedes, lessee.

SUBJECT – Application December 28, 2018 – 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. PREMISES AFFECTED – 46 Kissel Avenue, Block 0078, Lot 0021, 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 July 13-14, 2020, at 10 A.M., for decision, hearing closed.

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### 2019-69-A & 2019-70-A

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

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

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

### COMMUNITY BOARD # 2SI

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.

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### 2019-195-A

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

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

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

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M., for continued hearing.

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### 2019-281-A

APPLICANT – New Cingular Wireless PCS, LLC, for Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a Forest Promenade Shopping Center, Block 1479, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M., for adjourned hearing.

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# MINUTES

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## ZONING CALENDAR

### 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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 12, 2015, acting on Department of Buildings Alteration Type I Application No. 320914383, reads in pertinent part:

- “1. ZR 23-141(b) Floor area is contrary to zoning regulations.
2. ZR 23-141(b) Proposed lot coverage is contrary to zoning regulations.
3. ZR 23-141(b) Proposed open space is contrary to zoning regulations.
4. ZR 23-47 Proposed rear yard is contrary to zoning regulations
5. ZR 23-461 Proposed side yards are contrary to zoning regulations.”

The Board notes that since the time of this application, the Zoning Resolution has been amended and the text formerly found in Z.R. § 23-141(b), setting forth the maximum floor area ratio, open space and lot coverage permitted in an R3-2 zoning district, is now found at Z.R. § 23-142; thus, the Board treats the citation to ZR § 23-141(b) in DOB’s objection as a citation to ZR § 23-142.

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-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.

A public hearing was held on this application on August 22, 2017, after due notice by publication in *The City Record*, with continued hearings on October 11, 2018, September 10, 2019, February 4, 2020, and April 5, 2020, and then to decision on June 15, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the east side of Bedford Avenue, between Avenue R and Avenue S, within an R3-2 zoning district, in Brooklyn. With approximately 40 feet of frontage along Bedford Avenue, 100 feet of depth, and 4,000 square feet of lot area, the Premises are occupied by an existing three-story plus cellar single-family detached residence.

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

The existing single-family residence is a three-story plus cellar detached residence with 0.85 FAR (3,937 square feet of floor area), 65 percent of open space (2,595 square feet), 35 percent of lot coverage (1,405 square feet), two side yards with widths of 2'-11" and 6'-10", and a rear yard with a depth of 42'-3-1/2". The applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar one-family detached residence with 1.00 FAR (3,985.37 square feet of floor area as follows: 1,763.1 square feet of floor area on the first floor; 1,482.06 square feet of floor area on the second floor; and 740.21 square feet of floor area in the attic), 56 percent of open space (2,236 square feet), 44 percent of lot coverage (1,482 square feet), two side yards with widths of 2'-11" and 6'-10", and a rear yard with a depth of 23' at the first floor, and 30' above.

At the Premises, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 65 percent of open space (2,600 square feet) is required, a maximum of 35 percent of lot coverage (1,400 square feet) is permitted, two side yards with minimum widths of 5 feet and 13 feet of total side yards, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-142, 23-461, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 1,405 square feet to 1,763 square feet, the second floor, from 1,253 square feet to 1,482 square feet, and legalize 740 square feet of floor area in the attic space.

The applicant represents that the proposed one-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises- and with the same relevant bulk regulations (the “Study Area”), finding that 100 residences have an FAR greater than 0.5, ranging from 0.52 to 1.07. The applicant submitted a rear yard study demonstrating that, on the subject block, 18 interior lots (42 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 16 feet, and 8 of those lots have rear yards with a depth of 23' or less. The applicant provided a frontage study and represents that the as-built condition will be in context with the social block.

The Board notes that the existing building was not built according to DOB plans and the Board’s decision does

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# MINUTES

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not legalize the existing conditions. The proposed enlargement is considered as follows: an enlargement in the rear yard at the first floor: 21'-4" x 18'-5", to provide a rear yard with a depth of 23'; the enlargement at the rear provides a 5'-1" northern side yard and 16'-6" southern side yard; a second floor rear enlargement of 14'-4-1/2" x 18'-5" providing a complying 30' rear yard at the second floor, and providing a 5'-1" northern side yard and a 15'-6" southern side yard; 29'-7-7/16" above grade with a total floor area of the zoning lot, including the interior and rear yard, of 3,985.37 square feet. No increase in height is permitted. No other incursions into the existing side yards, rear yard, or front yard are permitted. No other increase in floor area, except as herein stated, is permitted. The Board takes no position with regard to the legality of the layout of the cellar level, which is not to be used for sleeping. The Board also takes no position with regard to the legality of the side yards, front yard, height of the building, parking space, or driveway.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16BSA0003K, dated June 15, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 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, 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 March 27, 2020" – sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.00 FAR (an enlargement in the rear yard at the first floor: 21'-4" x 18'-5", to provide a rear

yard with a depth of 23'; the enlargement at the rear provides a 5'-1" northern side yard and 16'-6" southern side yard; a second floor rear enlargement of 14'-4-1/2" x 18'-5" providing a complying 30' rear yard at the second floor, and providing a 5'-1" northern side yard and a 15'-6" southern side yard; 29'-7-7/16" above grade with a total floor area of the zoning lot, including the interior and rear yard, of 3,985.37 square feet of floor area as follows: 1,763.1 square feet of floor area on the first floor; 1,482.06 square feet of floor area on the second floor; and 740.21 square feet of floor area in the attic); a minimum of 56 percent of open space (2,236 square feet) and a maximum of 44 percent of lot coverage (1,482 square feet); two side yards with minimum widths of 2'-11" and 6'-10"; and, a rear yard with a minimum depth of 23' at the first floor, and 30' above, as illustrated on the Board-approved plans;

THAT no other incursions into existing side yards, rear yards, or front yards are permitted and no increase in height or floor area, other than as described, is permitted;

THAT the BSA takes no position on the legality of the existing yard dimensions, building height, parking space, driveway, or on the legality of the layout of the proposed cellar level, which shall not be used for sleeping or living purposes;

THAT removal of existing joists or perimeter walls in excess of 50 percent or 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. 157-15-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 May 16, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 15, 2020.

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# MINUTES

2019-6-BZ

CEQR #19-BSA-069M

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 39<sup>th</sup> Street, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated January 4, 2019 acting on Alteration Application No. 121189276, reads in pertinent part: “1. ZR 24-11 Proposed floor area exceeds the maximum permitted FAR of 4.0 for a community facility in district R8B as per ZR Section 24-11. 2. ZR 24-11, ZR 24-12 Proposed lot coverage above a height of 23’ above base plane exceeds the maximum permitted lot coverage of 70% for a community facility in district R8B as per ZR Section 24-11. 3. ZR 24-33, ZR 24-36 Proposed rear addition at both the first and second floors is not a permitted obstruction in the 30’ required rear yard as per ZR Sections 24-33 and 24-36. The existing basement qualifies as the permitted obstruction in the required rear yard, limited to one story, as per ZR 24-33(b)(3).”

This is an application for a variance under Z.R. § 72-21 to permit—in an R8B zoning district—the enlargement of an existing community-facility building used by a religious institution that would not comply with zoning regulations for lot coverage (Z.R. §§ 24-11 and 24-12) and rear yards (Z.R. §§ 24-33 and 24-36).

This application is brought by the Eastern Prelacy of the

Armenian Apostolic Church (the “Religious Institution”), a religious institution that has been established within the City since 1958.

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 December 10, 2019, February 25, 2020, April 20, 2020, and then to decision on June 15, 2020.

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

Community Board 6, Manhattan, has no objection this application.

As discussed herein, the Board finds that this application meets applicable requirements and warrants the exercise of discretion to grant.

I.

The Premises are located on the south side of East 39th Street, between Lexington Avenue and Third Avenue, in an R8B zoning district, in Manhattan. With 22 feet of frontage 99 feet of depth, and 2,140 square feet of lot area, the Premises are improved with an existing four-story, with cellar, community-facility building with 6,334 square feet of floor area and a one-story extension in the rear at basement level (the “Building”).

The Board has exercised jurisdiction over the Premises since May 20, 1997, when, under BSA Calendar Number 218-96-BZ, the Board granted a variance to allow a one-story enlargement above the basement floor at the rear of the existing building. On February 24, 2009, the Board granted an extension of time to complete construction, which expired in 2013. However, this previously approved enlargement was never built.

II.

Originally, with this application, the applicant proposed to enlarge the Building with a fifth story as well as a three-story extension in the rear with a height of 31 feet—resulting in a total of 8,793 square feet of floor area (4.1 FAR) and 100-percent lot coverage. In response to concerns from the Board expressed at hearing as to whether such an enlargement was necessary to accommodate the Religious Institution’s programmatic needs, the applicant provided additional information about the Religious Institution’s program and reduced the massing of the enlargement proposed in the rear.

Now, the applicant proposes to enlarge the Building with the addition of a fifth story and a second-story extension in the rear yard with a height of 21 feet—resulting in a total of 8,468 square feet of floor area (3.97 FAR) and 100-percent lot coverage (the “Proposed Building”).

The Proposed Building could not be constructed as of right because lot coverage cannot exceed 70 percent, see Z.R. §§ 24-11 and 24-12, and only a one-story extension into the rear yard is allowed, see Z.R. §§ 24-33 and 24-36.

Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21, and the Board acknowledges that the applicant, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

A.

Consistent with Z.R. § 72-21, the applicant submits

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that meeting the Religious Institution's programmatic needs creates practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

More specifically, the applicant notes that the Proposed Building is necessary to accommodate the Religious Institution's programmatic needs. In support of this contention, the applicant furnished a report on the Religious Institution's programmatic needs (the "Programmatic Needs Report") that outlines the Religious Institution's program, sets forth the programmatic deficiencies it faces in the Building, and details how the Proposed Building would alleviate these deficiencies.

The Religious Institution's program focuses on its seminary curriculum and religious and cultural activities to support its mission. First, with respect to its curriculum, there are approximately three to four seminarians residing at the Premises at any given time to study a curriculum including languages (English, Hebrew, Greek and French); theology (Old Testament, New Testament and Liturgy); history (History of the Armenian Church, Armenian History, History of the Catholicosate of Cilicia, History of Philosophy, History of Religions, American history and geography); Armenology (Classical Armenian, Classical Armenian Literature, Literature, Linguistics and Writing); Social Sciences (Psychology and Pedagogy); and Ecclesiastical studies (Religious Hymns, Voice Training and Musical Notation). This curriculum requires sufficient space for library resources as well as areas for private and group study and classroom instruction by visiting scholars. The resident seminarians further engage in pastoral work, focusing on social work, counseling, and conflict resolution, and participate in religious ceremonies, daily prayer services (morning, noon, evening, and vespers), and private prayer.

Second, regarding its religious and cultural activities, the Religious Institution requires adequate space to house religious services weekly. Cultural activities include lectures, book presentations, bible studies, art exhibits, and social group meetings—approximately twice per week—and the Religious Institution provided an annual schedule of activities and frequencies. With these activities, attendance has steadily grown (in excess of 50 people per event, and often 60–75 or more), reflecting increased interest from new members.

Because of these expanding programmatic needs, the Religious Institution cannot house all its program within the Building, instead turning to off-site locations because of space constraints. For instance, the Building's ceremonial-meeting space cannot accommodate an average attendance of 50 people. Additionally, converting basement space from office to meeting space is not feasible because of low ceiling heights, which would not accommodate its use as meeting space, and because direct access to the street would not allow for a reception area for security and to ensure orderly arrivals and departures.

The Programmatic Needs Report further demonstrates that the Proposed Building would accommodate the

Religious Institution's program by providing a second-story enlargement in the rear that would accommodate a larger multipurpose room for religious, educational, and related activities and would further provide accessibility with the installation of an elevator to allow participation by people with disabilities.

Accordingly, the Board finds that meeting the Religious Institution's programmatic needs creates practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

B.

Because the Religious Institution is a non-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of residential, commercial, and community-facility land uses.

With respect to the built environment, the record reflects that both adjacent buildings have rear-yard extensions at the second-story level, which the Proposed Building would match in height at the rear. There are also buildings nearby that exceed 30 stories in height, and the Proposed Building is similar in height to others along East 39th Street.

In response to questions from the Board at hearing, the applicant submits that the Proposed Building will be clad with stone panels.

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

D.

The applicant notes that meeting the Religious Institution's presents practical difficulties or unnecessary hardship. This situation was not created by the Religious Institution or a predecessor in title but are instead reflective of difficulties in strictly complying with applicable zoning regulations. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right enlargement would not meet the Religious Institution's programmatic needs because, among other things, it would not provide sufficient space for the Religious Institution's increased attendance.



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The applicant also notes that the Proposed Building reflects a reduction in size in response to questions from the Board about whether the Religious Institution’s program could justify the bulk and massing of the originally proposed building, which included a three-story extension in the rear. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

#### IV.

The Board has conducted an environmental review of the proposed action, which is classified as a Type II action pursuant to 6 NYCRR, Part 617.5, as noted in CEQR Checklist No. 19BSA069M (March 11, 2020).

#### V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. § 72-21 to *permit*—in an R8B zoning district—the enlargement of an existing community-facility building used by a religious institution that would not comply with zoning regulations for lot coverage (Z.R. §§ 24-11 and 24-12) and rear yards (Z.R. §§ 24-33 and 24-36); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received April 30, 2020”—Eleven (11) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: lot coverage of 100 percent and a two-story extension into the rear yard, 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. 2019-6-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 May 17, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 15, 2020.

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#### 2019-48-BZ

#### CEQR #19-BSA-101Q

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 41<sup>st</sup> Street, Block 679, Lot 23, Borough of Queens.

#### COMMUNITY BOARD #1Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated February 13, 2019, acting on New Building Application No. 420664953, reads in pertinent part: “Proposed plans are contrary to Zoning Resolution Section 23-49 in that an 8-foot side yard is not provided along the side lot line of the zoning lot without an abutting building.”

This is an application for a variance under Z.R. § 72-21 to permit—in an R5 zoning district—the construction of a three-story, with cellar, two-family residence that would not comply with special provisions for side lot-line walls (Z.R. § 23-49).

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on February 11, 2020, April 28, 2020, May 5, 2020, and then to decision on June 15, 2020.

Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 1, Queens, recommends approval of this application.

The Premises are located on 41st Street, between Broadway and 31st Avenue, in an R5 zoning district, in Queens. They have approximately 21 feet of frontage along 41st Street, 30 feet of depth, and 1,200 square feet of lot area. The Premises are improved with a two-story, with cellar, single-family residence with approximately 1,200 square feet of floor area (1.0 FAR).

The applicant proposes to construct a three-story, with cellar, two-family attached residence with 2,615 square feet of floor area (1.25 FAR) and no side yards (the “Proposed Building”). At the Premises, an 8-foot side yard would be required along the side lot line shared with Lot 121, so the applicant requests relief from this zoning provision.

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

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the Premises’ narrow width of 21 feet—

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that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district. In support of this contention, the applicant surveyed the immediate area, finding that there are approximately 37 lots that have similarly narrow widths (less than 24 feet) but that none of these lots provide side yards. Looking to a larger radius, the applicant further finds approximately 260 narrow lots with only four that provide any side yards—though they differ from the Premises by being situated at a corner and being subject to a reciprocal driveway easement.

The applicant notes that, because of the Zoning Resolution's side-yard regulations, only a 13-foot-wide residence could be constructed as of right—a substandard width for a residential building. The applicant further submits that enlarging the existing residence, which is built almost entirely within the required rear yard, would present practical difficulties in complying with applicable zoning regulations without creating a new non-compliance or increasing the degree of non-compliance. More specifically, a vertical enlargement would not be allowed within the required rear yard, and a horizontal enlargement would encounter the same required side yard as the Proposed Building.

Accordingly, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

Because the applicant proposes a two-family residence, the applicant states and the Board agrees that no financial hardship need be demonstrated.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant provided a photographic streetscape study of the surrounding area, demonstrating that residences in the vicinity range in height from 21 to 45 feet with FARs between 0.36 to 2.57. Furthermore, properties immediately adjacent to the Premises have buildings with heights of 31 and 39 feet with FARs of 1.22 and 1.94—situating the Proposed Building's height of 30 feet and FAR of 1.25 well within existing neighborhood character. The applicant also notes that of 486 residential buildings in the vicinity, 451 (93 percent) contain two or more dwelling units and that 105 of 119 narrow lots (88 percent) contain two or more dwelling units—demonstrating that the Proposed Building's two dwelling units are consistent with surrounding residential uses.

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

The applicant notes that the above unique physical conditions, including the layout of the Building and

arrangement of the Premises, present practical difficulties or unnecessary hardship. This situation was not created by the owner or a predecessor in title, given that the Premises has remained at its current width since before 1961 and has not been held in common ownership since. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. In support of this contention, the applicant notes that a lesser variance with a side yard would not result in a viable building because it would reduce the width of the building and prevent the Premises from providing the required second parking space, which the Proposed Building would house within its enclosed garage. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The Board has conducted a review of the proposed action, which is classified as Type II pursuant to 6 NYCRR Part 617.5, as noted in the CEQR Checklist No. 19-BSA-101Q, dated June 15, 2020.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. § 72-21 to *permit*—in an R5 zoning district—the construction of a three-story, with cellar, two-family residence that would not comply with special provisions for side lot-line walls (Z.R. § 23-49); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received June 10, 2020”—Fourteen (14) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: no side yards, 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. 2019-48-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by April 29, 2025;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other

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relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 15, 2020.

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**2019-84-BZ**

**CEQR #19-BSA-129Q**

APPLICANT – Akerman LLP, for 107-18 Realty Associates, owner; FIT4U, LLC, lessee.

SUBJECT – Application May 1, 2019 – 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. PREMISES AFFECTED – 107-18 70<sup>th</sup> Road, Block 3239, Lot 38, Borough of Queens.

**COMMUNITY BOARD #6Q**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 2, 2019, acting on DOB Alteration Type I Application No. 421418763, reads in pertinent part:

“The proposed physical culture establishment (gym) use is not permitted as-of-right in the C4-4A 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.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C4-4A zoning district and in the Special Forest Hills district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story, plus cellar, commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on May 5, 2020, after due notice by publication in *The City Record*, and then to decision on June 15, 2020. Commissioner Sheta performed an inspection of the site and surrounding neighborhood. Community Board 6, Queens, recommends of this application. The Queens Borough President also recommends approval of this application

The Premises are located on the east side of 70th Road, between Austin Street and Queens Boulevard, within a C4-4A zoning district and in the Special Forest Hills district, in Queens. With approximately 150 feet of frontage along 70th Road, 130 feet of depth, 19,500 square feet of lot area, the Premises are occupied by an existing one-story, plus cellar, commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize

the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 2,773 square feet of floor area on the first floor with an exercise studio, reception, restrooms, shower, and storage. The PCE began operation on March 21, 2019, as “Orangetheory Fitness,” with the following hours of operation: Monday to Friday, 4:30 a.m. to 10:00 p.m., and, Saturday and Sunday, 6:00 a.m. to 6:00 p.m.

The applicant states that, while the PCE is located within a commercial building, sound attenuation measures are maintained to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces, including sound-attenuating suspended ceiling and demising walls, and sound attenuating floor tiles. 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 commercial area characterized by retail stores, eating and drinking establishments, and other gyms. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and that the PCE will be an asset to the surrounding area. The applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space. By correspondence dated April 23, 2020, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler) that has been inspected and tested satisfactory to the department’s rules and regulations. A fire alarm system is not required for the Premises. Based upon the foregoing the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the

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

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA129Q, dated May 2, 2019.

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 the applicant has substantiated a basis to warrant exercise of discretion. The term of the special permit has been reduced to reflect the period of time the PCE operated without approval.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C4-4A zoning district and in the Special Forest Hills district, the operation of a physical culture establishment on a portion of the first floor of an existing one-story, plus cellar, commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 2, 2019”- Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 21, 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 and sprinkler shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-84-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 January 10, 2021;

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 15, 2020.

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**CORRECTION: This resolution adopted on June 15, 2020, under Calendar Nos. 2019-193-BZ and 2-10-BZ, is hereby corrected to read as follows:**

## **2019-193-BZ & 2-10-BZ**

### **CEQR #20-BSA-008M**

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.

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 13<sup>th</sup> Street), 310 East 14<sup>th</sup> Street (a/k/a 302 East 14<sup>th</sup> Street, a/k/a 302-318 East 14<sup>th</sup> Street/224-26 Second Avenue, 300 East 14<sup>th</sup> Street, 326 East 14<sup>th</sup> Street & 313 East 13<sup>th</sup> Street (a/k/a 313-327 East 13<sup>th</sup> Street, Block 455, Lot(s) 1, 5, 7, 20, 62, 60, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 15, 2019, acting on New Building Application No. 121205196, reads in pertinent part: “The New Building does not comply with the height and setback regulations of ZR23-662 (as referenced by ZR33-40 and ZR35-61). Portion of the new building on Floors 1 through 7 and new mechanical equipment on the existing North Building do not comply with the rear yard equivalent regulations of ZR33-283(a). Portion of the new building on the second floor do not comply with the rear yard regulations of ZR33-26. The proposed removal of an existing one-story building increases the degree of non-compliance with the street wall location regulations of ZR35-651(b) (as referenced by

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ZR33-40 and ZR35-651) along the Second Avenue and E. 14th Street frontage of the zoning lot. The proposed transfer of floor area from the C1-7A to the C1-6A zoning district does not comply with the split lot regulations of ZR 77-02. The proposed signage does not comply with the height, area and projection regulations of ZR32-643, ZR32-652 and ZR32-655.”

This application consists of two parts. First, the applicant seeks an amendment to a special permit, previously granted by the Board under Z.R. §§ 73-03 and 73-641 (Integration of New Buildings or Enlargements), to modify street-wall requirements at the corner of East 14th Street and Second Avenue (Z.R. § 35-651(b)), height and setback regulations along East 13th Street (Z.R. §§ 23-662, 33-40, and 35-61), and rear-yard equivalent requirements (Z.R. § 33-283(a)). Next, the applicant seeks a variance to modify split-lot regulations to transfer floor area from the C1-7A portion to the C1-6A portion of the Premises (Z.R. §§ 77-02), rear-yard regulations at the second floor (Z.R. § 33-26), and signage regulations with respect to surface area, projection, and height (Z.R. §§ 32-643, 32-652, and 32-655).

This application has been brought on behalf of New York Eye and Ear Infirmary of Mount Sinai, Mount Sinai Beth Israel, and Icahn School of Medicine at Mount Sinai (collectively, the “Teaching Hospital”).

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on February 25, 2020, April 7, 2020, May 19, 2020, June 2, 2020, and then to decision on June 15, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 3, Manhattan, recommends approval “with reservations about minimal backyard clearance between some residential buildings on East 14th street and strongly encourages [the Teaching Hospital] to reach out to those buildings and discuss the issue with the residents and other buildings nearby the ER entrance to address the ambulance noise issue.”

## I.

The Premises are located on the east side of Second Avenue, with frontages along East 13th Street and East 14th Street, partially in a C1-6A zoning district and partially in a C1-7A zoning district, in Manhattan. They have 355 feet of frontage along East 13th Street, 207 feet of frontage along Second Avenue, 204 feet of frontage along East 14th Street, and 61,434 square feet of lot area. The Premises are improved with the South Building (Lot 1 and westerly portion of Lot 60); the North Building (Lot 5), a one-story commercial building (Lot 7), an open parking lot (Lot 20) and open service yard (easterly portion of Lot 60), and previously-existing 14-story hospital-staff residence (Lot 52).

The Board has exercised jurisdiction over the Premises since March 2, 2010, when under BSA Cal. No. 2-10-BZ, the Board granted a special permit to allow the construction

of an enlargement to a nine-story community-facility building that does not comply with rear-yard regulations on condition that the bulk parameters of the building be as reflected on the Board-approved drawings. On August 21, 2018, the Board amended the special permit to merge two lots into the Premises, increasing the lot area from approximately 44,870 square feet to 61,441 square feet.

The applicant now proposes to construct a new seven-story community-facility building with 112,484 square feet of floor area (the “New Building”). Along with this proposal, the applicant would partially renovate the North Building and the South Building and would demolish the existing one-story commercial building to create a plaza, thereby creating an integrated hospital campus.

More particularly, the New Building would contain a total of 112,484 square feet of floor area (1.83 FAR), resulting in the Premises’ containing a total of 283,794 square feet of floor area (4.62 FAR) with 191,880 square feet (4.65 FAR) in the C1-7A zoning district and 91,919 square feet (4.57 FAR) in the C1-6A zoning district; however, the Zoning Resolution only allows 80,536 square feet of floor area (4.0 FAR) in the C-16A portion of the Premises without allowing unused floor area to be transferred from the C1-7A portion, *see* Z.R. §§ 33-123 and 77-02.

The Premises would also provide a street wall extending to a height of 46.79 feet along a wide street within the C1-7A portion with 83.5 percent at the street line along East 14th Street and 50.0 percent at the street line along Second Avenue; however, on wide streets and portions of narrow streets within 50 feet of a wide street, 100 percent of the street wall must be located at the street line along a zoning lots’ entire frontage and must extend to a minimum height of 60 feet, though 30 percent of the width may be recessed above the ground floor, *see* Z.R. § 35-651.

The New Building would have a base height of 112.29 feet, a building height of 135.29 feet, and no setback along East 13th Street (a narrow street); however, in a C1-7A zoning district, buildings may have maximum base heights of 85 feet and maximum building heights of 120 feet with setbacks of 15 feet along narrow streets, and, in a C1-6A zoning district, buildings may have maximum base heights of 65 feet, maximum building heights of 80 feet with setbacks of 15 feet along narrow streets, *see* Z.R. §§ 23-662, 33-40, and 35-61.

The Premises’ through-lot portion would maintain existing encroachments into the rear-yard equivalent previously approved by special permit, with additional mechanical equipment added to the second-story roof of the North Building, and the New Building would further encroach into the rear-yard equivalent at the connection of Lots 20 and 52 with building portions having depths between 20 feet and 40 feet and heights of 36.79 feet at the second story (47.50 feet and 67.50 feet in width), 40.79 feet at the second story (22.50 feet in width), and 112.29 feet at the seventh story (85.89 feet in width); however, a rear-yard equivalent with a minimum depth of 40 feet above the first story (with a maximum height of 23 feet) is required, *see*

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Z.R. § 33-283(a).

The New Building would also encroach into the rear yard required at the interior lot portion at heights of 36.79 feet and 40.79 feet, with a 20-foot rear yard above the second story; however, a 20-foot rear yard is required above the first story with a maximum height of 23 feet, *see* Z.R. § 33-26.

With respect to signage, along East 14th Street, signage would have a total of 147 square feet of illuminated surface area in the corner-lot portion, 118.75 square feet of illuminated surface area and 468.75 square feet total surface area in the western through-lot portion, and 0 square feet of surface area in the eastern through-lot portion; however, only 50 square feet of illuminated surface area and 150 square feet of total surface area are allowed in each portion, *see* Z.R. § 32-643. Along Second Avenue, signage would have a total of 350 square feet of surface area in the northern corner-lot portion and a total of 42.10 square feet of illuminated surface area in the southern corner-lot portion; however, only 50 square feet of illuminated surface area and 150 square feet of total surface area are allowed in each portion, *see* Z.R. § 32-643. Along East 13th Street, signage would have a total of 139.5 square feet of non-illuminated surface area in the interior through-lot portion, which complies, *see* Z.R. § 32-643. Furthermore, signage would reach a height of 110 feet along East 14th Street and along Second Avenue and a height of 19 feet along East 13th Street; however, signage may not exceed a height of 25 feet above street level, *see* Z.R. § 32-655. Lastly, signage would project up to 16 inches along East 14th Street and along Second Avenue and up to 12 inches along East 13th Street; however, signage may not project more than 12 inches from the street line, *see* Z.R. § 32-652.

Accordingly, the applicant requests relief in the form of an amendment to the previously granted special permit and a variance.

## II.

The applicant first seeks an amendment to its previously granted special permit to modify street-wall requirements at the corner of East 14th Street and Second Avenue (Z.R. § 35-651(b)), height and setback regulations along East 13th Street (Z.R. §§ 23-662, 33-40, and 35-61), and rear-yard equivalent requirements (Z.R. § 33-283(a)).

As a threshold matter, the Board notes that the applicant has owned “any portion” of the Premises since before 1961, as reflected in a deed dated April 8, 1915, and has continuously used the Premises for a specified community-facility use since 1856. Accordingly, the Board finds that the applicant continues to satisfy the threshold requirements for this special permit. *See* Z.R. § 73-461.

The applicant represents that the proposed modifications are necessary to allow the Teaching Hospital to provide an essential service to the community. In particular, this special permit as originally granted in 2010 allowed the North Building to serve the needs of an influx of patients by accommodating additional space dedicated to a Post-Anesthesia Care Unit and related spaces along with efforts to comply with modern standards for health and

safety. The proposed modifications sought herein would similarly continue to facilitate essential services by expanding the post-anesthesia-care and procedural floor—thereby creating an integrated hospital facility equipped to provide both emergency medicine and inpatient care. The New Building would also enable additional hospital services, including interventional-radiology suites, hospital radiology services, inpatient beds, and emergency mental-health services. Accordingly, the Board finds that the requested modification is still required in order to enable the Teaching Hospital to provide an essential service to the community.

The applicant represents that the proposed modifications are necessary to create an integrated hospital facility because there is no way to design and construct the New Building in satisfactory physical relationship to the Premises’ existing buildings otherwise. In support of this contention, the applicant furnished a report demonstrating that the proposed modifications are necessary to accommodate the Teaching Hospital’s program, including the following components: uninterrupted hospital operations for the duration of construction; an emergency department of sufficient size for approximately 70,000 visits per year, with a Comprehensive Psychiatric Emergency Program unit for mental-health emergencies; an integrated operational and procedural platform with surgical suites, radiology services, and an expanded Post-Anesthesia Care Unit; inpatient beds for longer-term care of sufficient size to facilitate the Teaching Hospital’s educational program; training facilities to provide on-site training for medical students, fellows, and residents; and adequate administrative spaces for the combined hospital campus. Accordingly, the Board finds that, without the requested modifications, there is no way to design the New Building so as to produce an integrated development.

The applicant submits that the proposed modifications are the minimum required for the development of the New Building into an integrated hospital facility, thereby creating the least detriment to neighborhood character and nearby properties. First, the applicant notes that the New Building has been designed such that clinical and support functions are sized for efficiency and reduce waste by eliminating duplicative spaces and enhancing circulation. The integrated hospital facility, for instance, includes a pneumatic tube system that will allow the North Building and the New Building to use a single pathology laboratory. Second, the applicant notes that, because of the arrangement of buildings on the Premises, adjoining properties would not be affected by any modifications to street-wall requirements. Third, the New Building’s height and setbacks reflect the minimum floor-to-floor heights practicable for a modern hospital facility and are lower than the North Building. The applicant also furnished a neighborhood character study reflecting that the height of the New Building would be consistent with the built environment in the vicinity. Fourth, with respect to rear-yard equivalent, the arrangement of the Premises is such that the proposed reduction to the rear-yard equivalent would face other buildings on the Premises and is consistent

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with other through lots in the area. Lastly, the applicant's neighborhood character study reflects that the New Building and integrated hospital facility proposed are consistent with existing land-use patterns and the neighborhood's built environment, which includes three-to-nine story residential buildings and other buildings taller than the New Building (such as a 150-foot residential building and a 190-foot utility building). Accordingly, the Board finds that the requested modifications are still the minimum necessary to permit the development of an integrated community facility that will thereby create the least detriment to the character of the neighborhood and the use of nearby zoning lots.

The Board further finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area. The proposed project will also not interfere with any pending public improvement project, and the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to this special permit is outweighed by the advantages to be derived by the community.

The Board, therefore, has determined that the evidence in the record continues to support the findings for an amendment to this special permit. *See* Z.R. §§ 73-641 and 73-03.

### III.

Because the New Building could not be constructed with the above modifications allowed by special permit, the applicant also seeks a variance under Z.R. § 72-21 to modify split-lot regulations to transfer floor area from the C1-7A portion to the C1-6A portion of the Premises (Z.R. §§ 77-02), rear-yard regulations at the second floor (Z.R. § 33-26), and signage regulations with respect to surface area and height (Z.R. §§ 32-643, 32-652, and 32-655).

#### A.

As a preliminary matter, the Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21, and the Board acknowledges that the applicant, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the configuration and placement of existing buildings on the Premises, which must remain in uninterrupted operation to provide essential hospital services, and the presence of a required easement for a future subway entrance—that create practical difficulties or

unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

More specifically, the applicant notes the presence of the North Building and the South Building on the Premises. These existing buildings must remain in uninterrupted operation to provide essential hospital services and are accordingly unavailable for enlargement. Because of the location of these buildings within the C1-7A zoning district, where floor area remains unused, the Premises' development potential and use of floor area is severely curtailed. The presence of a zoning-required easement to accommodate a future entrance to the Second Avenue subway line further constrains the Premises by eliminating the ability to construct a permanent structure within the easement area. Additionally, with respect to the zoning-district boundary bisecting the Premises, the presence of existing buildings in the C1-7A portion pushes development into the C1-6A, limiting available floor area and resulting in an as-of-right building form that would contain irregular floorplates and duplicative hospital functions and mechanical, electrical, and plumbing systems.

Additionally, the applicant notes that the New Building is necessary to accommodate the Teaching Hospital's programmatic needs. In support of this contention, the applicant furnished a report on the Teaching Hospital's programmatic needs (the "Programmatic Needs Report") that outlines the Teaching Hospital's program, sets forth the programmatic deficiencies it would face with as-of-right development, and details how the New Building would alleviate these deficiencies.

With respect to the Teaching Hospital's educational program, the applicant notes that the integrated hospital facility would provide an accredited education program to serve approximately 400 trainees per year. Of these, approximately 350 trainees would be residents and fellows in 62 different programs (including addiction psychiatry, cardiovascular disease, endocrinology, gastroenterology, geriatric psychiatry, radiology, general surgery, otolaryngology, and ophthalmology). The remainder of these trainees would be medical students participating in clinical clerkships. The educational program provides trainees with patient interactions with clinics, rounds, and participating in surgical procedure in spaces sized to allow trainees' active participation in patient cases. Furthermore, the educational program's accreditation requires a classroom component where students engage in on-site testing, classroom learning, and collaborative case review. The Teaching Hospital's emergency-department facilities require sufficient wayfinding to allow vehicles and pedestrians in a safe and efficient manner. Accordingly, the Teaching Hospital's programmatic needs include educational facilities for on-site training and collaboration and providing in-patient beds for patients with longer-term care sized to accommodate learning opportunities.

With respect to as-of-right development, the applicant submitted an alternate design demonstrating that the Teaching Hospital would face programmatic deficiencies by

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complying strictly with applicable zoning provisions. In particular, the existing commercial building would be needed as a waiting room because of the as-of-right New Building's limited space for waiting areas on upper floors, increasing foot traffic throughout the integrated hospital facility. The North Building would feature limited accessibility for people with disabilities in the cellar and a significant reduction in administrative and clinical support spaces. The Teaching Hospital could not support sufficient volumes of emergency-department patients, and mechanical, electrical, and plumbing connections would reduce circulation and isolate exam rooms. The as-of-right building would also result in a shared vestibule between public elevators and inpatient elevators, creating an unnecessary risk of infection. Mechanical duct space would also displace a decontamination room, resulting in reduced space for an emergency-department resuscitation area. Next, the North Building and an as-of-right New Building could not connect, eliminating the integration and shared support functions for the second floor's procedural platform, duplicating patient intake and support facilities and eliminating operating rooms. This decrease in functionality for the procedural platform would increase patients' interior travel distances and reduce circulation efficiency. Furthermore, an as-of-right New Building would reduce the number of hospital beds and result in substandard floorplates, with patient rooms eliminated. As-of-right signage would prove similarly problematic by decreasing visibility by virtue of its limited height and obstruction by buildings in the vicinity.

The applicant notes that the New Building would alleviate the programmatic deficiencies posed by an as-of-right design. With respect to floor area, the New Building allows for proper emergency-department circulation, sufficient beds, pediatric emergency-department positions, and clinical support space for beds that would otherwise have to be eliminated. With respect to the encroachment into the rear yard, the New Building allows for an integrated procedural platform so that the New Building can house higher-intensity procedures and also provides efficient mechanical, electrical, and plumbing connections to avoid eliminating medical rooms and circulation. Additionally, the New Building eliminates programmatic deficiencies through compliance with applicable codes and standards required for hospitals at national, state, and local levels. Lastly, the New Building meets the Teaching Hospital's wayfinding program by including signage to direct pedestrians and vehicles to emergency-department entrances, as supported by a comprehensive wayfinding analysis submitted by the applicant.

Accordingly, the Board finds that the above unique physical conditions and the Teaching Hospital's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

B.

Because the Teaching Hospital consists of non-profit

organizations, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the New Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of residential and community-facility land uses along with vibrant retail corridors.

The applicant also furnished a neighborhood character study reflecting that the New Building and integrated hospital facility proposed are consistent with existing land-use patterns and the neighborhood's built environment, which includes three-to-nine story residential buildings and other buildings taller than the New Building (such as a 150-foot residential building and a 190-foot utility building).

With respect to the rear yard, the applicant notes that, because of the arrangement of the Premises, few properties in the vicinity would have a view of the New Building's rear yard, other buildings nearby have non-complying rear yards, and the New Building's wall has been designed without windows to ensure residents' privacy.

With respect to signage, the applicant notes that its design is consistent with the varied signage typologies in the area, ranging from marquees to awnings and placards. The proposed signage has been designed to incorporate dimmable lighting for appropriate adjustments to prevent intrusive illumination for nearby residents.

As to building materials, the applicant notes that the New Building would be clad in materials that visually relate to the mixture of older and newer buildings in the surrounding area, including brick with varied color and depths to relate the New Building to the South Building while enhancing the streetscape. Upper floors on the New Building would feature a curtain wall designed to reduce potential for reflections, and mechanical equipment would be screened appropriately.

With respect to potential traffic and noise, the applicant supplied an operational plan demonstrating that the integrated hospital facility would be operated in such a manner as to minimize any disruption to the surrounding area. The Teaching Hospital's emergency department would generate a small number of ambulance trips and few ambulances using lights and sirens. Additionally, the Teaching Hospital would employ both a delivery vehicle manager and an ambulance coordinator to minimize potential traffic disruptions on East 13th Street.

With respect to refuse, the applicant notes that the New Building would contain an enclosed trash compactor next to loading berths on East 13th Street.

At hearing, the Board questioned the presence of a proposed accessibility ramp located on the sidewalk within the bed of East 14th Street. In response, the applicant supplied additional analysis alleging that relocating the ramp within the confines of the Premises' existing buildings would not be feasible because of existing grade changes and



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structural system and the intricacies of the mechanical, plumbing, and electrical systems.

The Board also expressed concerns with the illumination and size of the proposed signage. In response, the applicant submits that two illuminated blade signs would be dimmed after 10:00 p.m., and a third would be turned off after 10:00 p.m. Other signs serving building-identification purposes would have no illumination at any time. The applicant notes that these changes to the proposed signage eliminate the need for a variance on East 13th Street and reduce the total signage variance on Second Avenue and East 14th Street.

The Board further directed the applicant to provide a restrictive declaration recorded against the property that will ensure that key components of the Teaching Hospital's operations—including refuse handling, methods to ensure appropriate traffic control, and signage illumination—will be carried out as required to safeguard the surrounding area.

The Fire Department states, by correspondence dated March 26, 2020, that it has no objection to this application.

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

#### D.

The applicant notes that the above unique physical conditions, including the layout of the Building and arrangement of the Premises, present practical difficulties or unnecessary hardship. This situation was not created by the Teaching Hospital or a predecessor in title, given that the existing buildings were constructed years before the current zoning regulations became applicable.

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

#### E.

The applicant submits that the New Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right New Building would not meet the Teaching Hospital's programmatic needs because, among other things, it would eliminate key aspects of the Teaching Hospital's program, which could not be replicated in the C1-7A portion of the Premises, and would reduce efficiencies in circulation and shared support spaces. The applicant further notes that, to the extent possible, relief has been sought through other means, including an amendment to the previously granted special permit, as discussed above.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

#### IV.

The Board has conducted an environmental review of the proposed action, which is classified as a Type I action pursuant to 6 NYCRR, Part 617.2, and has documented

relevant information about the project in the Final Environmental Assessment Statement CEQR No. 20BSA008M (June 15, 2020).

The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction.

The Landmarks Preservation Commission, by correspondence dated October 4, 2019, represents that the proposed project would not have any potential for adverse impacts with respect to historic resources and shadows.

The Department of Environmental Protection states, by letter dated October 18, 2019, that the August 2019 Phase II Work Plan and the July 2019 Health and Safety Plan for the proposed investigation are acceptable on condition that soil vapor samples be collected at a depth comparable to the expected depth of foundation footings for the proposed project or at least 1 foot above the water table in areas where the groundwater table is less than 6 feet below grade and that the proposed soil, groundwater, and soil vapor sampling locations be individually depicted and labeled on Figure 2, Proposed Sample Locations (e.g., SB-1, GW-1, SV-1, etc.).

The Department of Environmental Protection states, by letter dated February 5, 2020, that the January 2020 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) are acceptable on condition that suspected asbestos containing material, lead-based paint, and polychlorinated biphenyls be properly removed or managed before the start of construction activities and disposed of in accordance with all federal, state, and local regulations, and on further 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 New York State Department of Environmental Conservation regulations, proof of installation of engineering control system, and two feet of Department of Environmental Protection-approved certified clean fill-top soil capping requirement in any landscaped or grass-covered areas not capped with concrete, asphalt, etc.).

In response to the Department of Environmental Protection's letter, the applicant prepared a revised RAP dated March 2020 which incorporates the requested additional remediation measures. Based on the foregoing, the proposed project would not have any potential for adverse impacts with respect to hazardous materials.

The Department of Environmental Protection represents, by letter dated January 7, 2020, that the proposed project would not result in any potential for adverse impacts with respect to air quality or noise, including construction-

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related impacts.

The Department of Transportation states, by letter dated June 12, 2020, that it concurs that a detailed traffic analyses is not warranted. In addition, based on a review of the pedestrian levels of service analysis, the proposed action would not result in any potential for significant adverse pedestrian impacts. However, the proposal will require further Department of Transportation review and approval as part of the revocable consent and the construction permitting processes. In order to support safe passage of vehicles and pedestrians, the applicant has committed to deploy on-site staff to manage the loading docks, including compactor removal operations. In addition, the applicant has committed to install a placard identifying the facility, the permitted hours of compactor removal operation, and a contact number for community concerns, as well as additional lighting which will be directed towards the compactor loading area and will utilize any necessary light shielding to minimize light spread to nearby residential uses.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

## V.

Based on the foregoing, the Board finds that the evidence in the record continues to support the findings required to be made under Z.R. §§ 73-641 and 73-03 and supports the required findings under Z.R. § 72-21, and the Board finds that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-641 and 73-03 and under Z.R. § 72-21 to *permit* the construction of a new seven-story community-facility building within an integrated hospital campus; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received June 10, 2020”—33 sheets; and *on further condition*:

THAT the maximum bulk parameters of the buildings shall be as reflected on the Board-approved drawings;

THAT no mechanical equipment shall be located behind the out parcels in the rear portion of the Premises, as illustrated on the Board-approved drawings;

THAT a restrictive declaration shall be recorded against the property in the Office of the City Register substantially conforming to the form and substance of the following:

Restrictive Declaration (this “Declaration”) made this day of 20 by New York Eye and Ear Infirmary (dba New York Eye and Ear Infirmary of Mount Sinai), a New York not-for-profit

corporation having an office at 310 East 14th Street, New York, NY 10003 (“NYEE”), NYEEI Housing Company, Inc., a New York not-for-profit corporation, having an address at 310 East 14th Street, New York, NY 10003 (“NYEEI”), and Beth Israel Medical Center Inc. (dba Mount Sinai Beth Israel), a New York not-for-profit corporation, having a current address at 10 Nathan D. Perlman Place, New York, NY 10003 and, upon completion of the New Hospital, having an address at 302 East 14th Street, New York, NY 10003 (“BI”) (NYEE, NYEEI, and BI, collectively, “Mount Sinai” or “Declarant”).

Whereas, NYEE is the fee owner of Block 455, Lots 1, 5, 7, 20, and 60 (the “NYEE Land”) and NYEEI is fee owner of certain land known as Block 455, Lot 52 (the “NYEEI Land” and, collectively with the NYEE Land, the “Zoning Lot”, all as more particularly described on Exhibit A attached hereto);

Whereas, Declarant desires to build the new hospital facility (the “New Hospital”) described in the New York City Board of Standards and Appeals (“BSA”) resolution dated June , 2020, a copy of which is attached hereto as Exhibit B (the “Resolution”);

Whereas, BSA has granted an amendment to a previously-granted special permit and a variance for the New Hospital under BSA Calendar Numbers 2-10-BZ and 2019-193-BZ (the “BSA Approval”), as set forth in the Resolution; and Whereas, as a condition to the BSA Approval, Declarant agreed to deliver this Declaration to memorialize certain commitments made by Declarant in connection with the operation of the New Hospital’s loading dock and ambulance bays, to be located on East 13th Street, and certain illuminated signage on the New Hospital, as described in the Resolution.

Now, therefore, in consideration of the BSA Approval and other good and valuable consideration, Declarant for itself, its legal representatives, successors and assigns does hereby agree as follows:

1. Transportation Staff. Declarant will provide a full-time delivery vehicle manager and an ambulance coordinator to support safe and efficient access to the New Hospital loading dock and ambulance bays within the context of transportation services and vehicular, bicycle, and pedestrian flow on the block, as follows:

- a. The delivery vehicle manager will be a full-time position responsible for coordinating safe and efficient delivery-vehicle arrivals and departures, including a dispatch function to control arrivals through both the advanced scheduling of

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- and real-time communications telephone with drivers to control the approach and pacing of delivery-vehicle arrivals.
- b. The delivery vehicle manager will work with several staggered-shift loading berth coordinators who will be responsible for directing movements of vehicles into and out of the loading berths, avoiding conflicts with other vehicles, bicycles, and pedestrians, and generally overseeing loading dock operations.
  - c. A loading berth coordinator will be responsible for coordinating safe and efficient removal and replacement of the container from the trash compactor in the loading area, including turning on the lights installed in accordance with Section 2(c) below, directing vehicle arrival and movements, placing cones or other markers to direct pedestrians away from vehicle movements, and closing the gate upon completion of these activities.
  - d. At the ambulance bay area, a dedicated security guard will be assigned at all times to assist in coordination of patient drop-off and transport, including directing the movement of ambulances into and out of the ambulance bays, avoiding conflicts with other vehicles, bicycles, and pedestrians, and directing ambulances to promptly depart the area.
2. Compactor Removal. With respect to the trash compactor located in the New Hospital loading area:
    - a. Compactor operations will occur within the waste collection/compactor service area, which will be enclosed behind a gate during the operation of the compactor. Except during the removal and replacement operation, the gate in front of the compactor will be closed.
    - b. Removal and replacement of the container from the trash compactor will be limited in frequency to 3-4 times per week during normal hospital operating conditions, and limited in time to evening off-peak hours, between 8 PM and 11 PM for an approximate 30-45 minute duration.
    - c. Declarant will install lighting directed towards the compactor loading area, with shielding to minimize light spread to nearby residential uses.
    - d. Declarant will install a permanent metal placard of less than 12 square feet in compliance with Section 12-10 of the Zoning Resolution, affixed to the façade immediately adjacent to the trash compactor loading bay identifying (i) the name of the facility, (ii) the permitted hours of compactor removal operations, and (iii) the contact phone number for the loading manager for community concerns.
  3. Signage. With respect to illuminated signage, beginning at 10 PM each night and ending at daylight the next morning, Declarant will reduce the illumination of two blade signs located on Second Avenue (the "Reduction Signs") and turn off the illumination of one blade sign located at the easterly lot line of 310 East 14th Street. In the event that Declarant fails to promptly cure a violation issued by the New York City Department of Buildings ("DOB") with respect to this commitment, BSA may require that Declarant convert one or more of these illuminated signs to non-illuminated signs, in addition to any other rights and remedies of DOB and the City of New York (the "City") described herein. Further, in the event that there are more than five (5) complaints filed with the Department of Buildings (311 complaints) within a three (3) month period filed by residents whose windows have a view of the Reduction Signs (the "Residential Neighbors") related to the degree of illumination of the Reduction Signs, Declarant shall further reduce the degree of illumination. If there are continued complaints filed with the Department of Buildings (311 complaints) resulting in more than five (5) complaints by the Residential Neighbors within a three (3) month period, then the Reduction Signs shall be converted to non-illuminated signs after 10 PM each night.
  4. Effective Date.
    - a. This Declaration shall have no force and effect unless and until the date of issuance of a temporary certificate of occupancy (the "TCO") for the New Hospital as approved in the Resolution (the "Effective Date"). This Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarant requests or causes any application for a TCO and the BSA Approval to be abandoned, or if the BSA Approval is revoked for any reason, then, upon notice to DOB and BSA, this Declaration shall not become effective, shall be automatically canceled and shall be of no force and effect.
    - b. If the BSA Approval or any other governmental approval required for the New Hospital, including but not limited to the New York State Department of Health Certificate of Need (the "CON") approval

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- is at any time declared invalid or is otherwise voided by final judgement of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgement or the expiration of the applicable statutory period for such entry, as the case may be, this Declaration shall be automatically cancelled without further action by Declarant and shall be of no further force or effect.
- c. In the event of a cancellation pursuant to this Section 4, BSA shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that this Declaration has been so canceled and is of no further force and effect.
5. Recordation: Declarant shall execute this Declaration and deliver a copy to the BSA prior to the BSA's vote for the BSA Approval. Declarant shall record this Declaration at its sole cost and expense in the Office of the City Register, indexing it against the Zoning Lot, prior to the issuance by DOB of a building permit for the New Hospital building. Declarant shall promptly deliver to BSA and DOB, as a condition to issuance of the TCO, a true copy of this Declaration as recorded, as certified by the City Register.
  6. Additional Remedies: Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, obligations, and agreements contained herein. No person other than Declarant or the City shall have any right to enforce the provisions of this Declaration. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration. Failure to comply with the terms of this Declaration may result in the revocation or modification of the BSA Approval or such other enforcement action as the City deems appropriate.
  7. Amendments, Modifications and Cancellations. Except as provided in Section 4 above, this Declaration may be amended or canceled only with the express written approval of Declarant and BSA, and no other approval or consent shall be required from any public body, private person or legal entity of any kind, except as expressly set forth in this Section 7; provided, however, that no such approval shall be required in the case of any cancellation pursuant to Section 4.
    - a. BSA may administratively approve modifications to or cancellation of this Declaration without Declarant (or a successor) making an application to BSA for an amendment of the BSA Approval or other discretionary land use relief.
    - b. A modification or cancellation of the covenants outlined in Section 1 related to transportation staff or Section 2 related to compactor operations shall require the approval of the Department of Transportation ("DOT"), and DOT shall be provided at least sixty (60) days' notice to review the proposed modification.
    - c. Any modification, amendment or cancellation of this Declaration, except pursuant to Section 4 shall be executed and recorded in the same manner as this Declaration.
  8. Notice and Cure.
    - a. Before any agency, department commission or other subdivision of the City institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration because of any violation hereof, it shall give Declarant forty-five (45) days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation. If Declarant commences to effect a cure during such forty-five (45) day period and proceeds diligently towards the effectuation of such cure, the aforesaid forty-five (45) day period shall be extended for a maximum of six (6) months so long as Declarant continues to proceed diligently with the effectuation of such cure.
    - b. If after due notice as set forth in this Section 7, Declarant fails to cure such alleged violations, the City may exercise any and all of its rights, including without limitation those described in this Section.
    - c. Any notice, demand, or other communications given or required to be given under or in connection with this Declaration shall be effective only if in writing and (i) sent by United States registered or certified mail, return receipt requested, postage prepaid; (ii) delivered by hand; or (iii) sent by nationally

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recognized overnight courier services. A Notice to Declarant shall be provided to each entity comprising Declarant at the addresses set forth above with a copy to Mount Sinai Health System, 150 West 42nd Street, New York, New York 10017, Attention: General Counsel. Declarant may provide notice to BSA of a change in such addresses by Notice to BSA at its then- current office address.

9. Acknowledgements and Covenants: Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration, which are an integral part of the BSA Approval, will protect the community, the City, and nearby property owners. Those restrictions, covenants, obligations and agreements shall be covenants running with the land, and shall bind Declarant and its successors, legal representatives and assigns; and in the event a party hereto is no longer a fee owner or party-in-interest in the Zoning Lot, such party shall no longer be a Declarant and shall have no further obligations or liability hereunder. Neither the directors of Declarant, nor any officer, agent, employee of any of them, shall be charged personally with any liability or held personally liable under any provision of this Declaration, or because of its execution or attempted execution, or because of any breach or attempted or alleged breach of any provision of this Declaration or otherwise.
10. Governance: This Declaration shall be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflicts of laws.
11. Severability: In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgement of such court shall be upheld on final appeal, or the time for further review of such judgement on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.
12. Right to Convey: Nothing contained herein shall be construed as requiring the consent of the City, or any agency thereof (including without limitation the DOB, BSA, DOT), or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Zoning Lot.
13. This Declaration may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original,

and such counterparts shall together constitute but one and the same instrument. Copies of this Declaration showing the true signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction may be used for all purposes as originals.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing Declaration as of the date hereinabove written.

THAT a vapor barrier and engineering control system shall be installed; soil removal and disposal shall be conducted in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping is required in any landscaped/grass covered areas not capped with concrete/asphalt;

THAT a Remedial Closure Report shall be submitted to DEP for review and approval upon completion of remediation;

THAT the South, East, and West façades of the proposed New Building will provide a composite Outdoor–Indoor Transmission Class (OITC) rating greater than or equal to 35, along with an alternate means of ventilation;

THAT all traffic and noise control measures and emission reduction program measures described in the Final Environmental Assessment Statement Attachment K: Construction (CEQR No. 20BSA008M) shall be implemented;

THAT a Construction Protection Plan shall be submitted to the Landmarks Preservation Commission for review before the start of construction;

THAT all transportation measures as described in the Final Environmental Assessment Statement Attachment H: Transportation (CEQR No. 20BSA008M) and Restrictive Declaration shall be implemented;

THAT certificates of occupancy, also indicating this approval and calendar numbers (“BSA Cal. Nos. 2019-193-BZ and 2-10-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 January 1, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 15, 2020.

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**2019-273-BZ**

**CEQR #20-BSA-035M**

APPLICANT – Law Office of Jay Goldstein, for Magnum Real Estate Group, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application October 8, 2019 – 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.

PREMISES AFFECTED –139-146 West Street (90-110 Barclay Street, 88-110 Vesey Street, 206-222 Washington St), Block 84, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 12, 2019, acting on DOB Alteration Type I Application No. 121830439, reads in pertinent part:

“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.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-4 zoning district and in the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 32-story, plus cellar and sub-cellars, mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on May 5, 2020, after due notice by publication in *The City Record*, and then to decision on June 15, 2020. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 1, Manhattan, recommends of this application.

The Premises are bounded by West Street to the west, Barclay Street to the north, Washington Street to the east, Vesey Street to the south, within a C6-4 zoning district and in the Special Lower Manhattan District, in Manhattan. With approximately 212 feet of frontage along West Street, 258 feet of frontage along Barclay Street, 212 feet of frontage along Washington Street, 255 feet of frontage along Vesey Street, 51,055 square feet of lot area, the Premises are occupied by an existing 32-story, plus cellar and sub-cellars, mixed-use residential and commercial building that has been designated as an interior landmark, the “Barclay-Vesey Building,” by the Landmarks Preservation Commission (“LPC”).

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

to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 795 square feet of floor area on the first floor with the PCE entrance, reception, and “PT studio”; and 7,955 square feet of floor space on the cellar level with exercise studios, locker rooms, common areas, retail space, storage, office, and support spaces. The PCE began operation in November 2019, as “Rumble Fitness,” with the following hours of operation: Monday to Friday, 5:30 a.m. to 10:00 p.m., and, Saturday and Sunday, 6:30 a.m. to 7:00 p.m.

The applicant states that, while the PCE is located within a commercial building, sound attenuation measures are maintained to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces. These measures include studio walls isolated from the adjacent structure with two to three layers of wall board, sound attenuated insulation in stud cavities and either two layers of wall board or 1” gypsum coreboard at outer side of studs; all flooring at the studio will be 1”-thick rubber tile flooring; all penetrations at studio ceilings and walls will be sealed with mineral fiber insulation and caulked; the studio ceiling will be isolated from existing slab above; the walls will have an STC rating of 60, the ceiling will have an STC rating of 63 and the flooring will have an STC rating of 60. 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 building in an area predominantly comprised of residential and commercial uses, and the PCE will not attract significant additional traffic to the area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant 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 as well as building tenants, and most of

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the PCE patrons walk or use mass transit to access the PCE. The applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space. By correspondence dated April 23, 2020, the Fire Department states that The following items listed below are a concern for the Fire Department: 1. Cellar Floor Plan: Exit door leading to Stair "A" as shown, is obstructed by a new wall in Room 010 (office/trainer/kitchenette). The Fire Department uses all exit stairs when responding to emergencies. Constructing a wall in front of an exit door will impede the department's response to the cellar floor. 2. Remove exit sign at exit door E04, this door leads to Room 010. 3. Provide first floor plan to show exit passageway to the street for Stairs "I", "C" and "A". 4. Provide exit door dimensions and fire rating. Based upon the foregoing the department object to the above referenced application and requests that the Board of Standards and Appeals have the applicant comply with these objections.

By correspondence dated April 28, 2020, the Fire Department states that plans have been revised to comply with the Fire Departments objection and request for clarification, in particular to the sealed door at Stair "A", located in the cellar. As per the applicant, this door was reviewed and approved by the Department of Buildings under application number Alt. I #121830439. A plan has been provided showing the exit route at the first floor to the street for the buildings exit stairs. The Premises are protected by fire suppression systems (standpipe and sprinkler) and a fire alarm system that has been tested to the Departments rules and regulations and FDNY permits are current. 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.

By Certificate of No Effect ("CNE") CNE-19-37372, issued April 8, 2019, LPC 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.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA035M, dated October 9, 2019.

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

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-4 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 32-story, plus cellar and sub-cellar, mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 28, 2020"- Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 1, 2029;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-273-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 January 10, 2021;

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 15, 2020.

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**2019-306-BZ**

**CEQR #20-BSA-052M**

APPLICANT – Law Office of Jay Goldstein, for Betty Kaufman Weisberger Trust FBO Robert E Kaufman, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application December 20, 2019 – 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.

PREMISES AFFECTED – 49 West 23<sup>rd</sup> Street, Block 825, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 3, 2019, acting on DOB Alteration Type I Application No. 121206257, reads in pertinent part:

“Proposed Physical Culture Establishment. . . is contrary to section 42-10 ZR and requires a special permit from the BSA (73-36).”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a M1-6 zoning district and in the Ladies’ Mile Historical District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and cellar level of an existing 12-story, plus cellar, commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on May 5, 2020, and then to decision on June 15, 2020. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation for this application.

The Premises are a through-lot with frontage on the north side of West 23rd Street and the south side of West 24th Street, between Fifth Avenue and Avenue of the Americas, within an M1-6 zoning district and the Ladies’ Mile Historical District, in Manhattan. With approximately 125 feet of frontage along West 24th Street, 198 feet of depth, 24,687 square feet of lot area, the Premises are occupied by an existing 12-story, plus cellar, commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning

Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies a total of 9,300 square feet of floor space, with 3,890 square feet of floor area on the first floor and 5,410 square feet of floor space in the cellar. The first floor contains a lobby, reception area, bathroom and studio. The cellar contains a lobby, staff lounge, personal training room, storage, lockers, and bathrooms. The PCE began operation in October, 2019, as “Rumble Fitness,” with the following hours of operation: Monday to Friday, 5:00 a.m. to 9:00 p.m., Saturday, 7:00 a.m. to 6:30 p.m., and Sunday, 7:00 a.m. to 8:30 p.m.

The applicant states that, while the PCE is located within a commercial building, sound attenuation measures are maintained to ensure that operation of the PCE does not cause disturbance to adjoining tenant spaces, including all typical walls are isolated from adjacent structure; studio walls have two layers of 5/8” GWB, 3 ½” sound attenuated BATT insulation in stud cavities, and either two layers of 5/8” GWB or 1” gypsum coreboard at outer side of studs; all flooring is one-inch thick rubber tile flooring; all penetrations at ceilings and walls are sealed with mineral fiber insulation and caulked; and, the studio ceiling is isolated from the existing slab above. 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 commercial area characterized by retail stores, eating and drinking establishments, and other gyms. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit.

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

The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and that the PCE will be an asset to the surrounding area. The applicant states that a sprinkler system and an approved fire alarm system are maintained within the PCE space. By correspondence dated April 23, 2020, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) and a fire alarm system that has been inspected and tested satisfactory to the Department’s rules and regulations. Based upon the foregoing the Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and



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regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA052M, dated December 23, 2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a M1-6 zoning district and in the Ladies' Mile Historical District, the operation of a physical culture establishment on the first floor and cellar level of an existing 12-story, plus cellar, commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 26, 2020"- Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring October 1, 2029;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-306-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 February 17, 2022;

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

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

THAT the Department of Buildings must 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 15, 2020.

## 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

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 10-11, 2020, at 10 A.M., for decision, hearing closed.

## 2019-165-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Zev Brachfield, owner.

SUBJECT – Application June 3, 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); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1375 East 26<sup>th</sup> Street, Block 7662, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 13-14, 2020, at 10 A.M., for decision, hearing closed.

# MINUTES

## 2019-184-BZ

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

### COMMUNITY BOARD #4Q

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 29-30, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M., for continued hearing.

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## 2019-296-BZ

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

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

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

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Laid over to July 27-28, 2020, at 10 A.M., for continued hearing.

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## 2020-27-BZ

APPLICANT – Sheldon Lobel, P.C., for Civil Concord Avenue LLC, owner.

SUBJECT – Application March 27, 2020 – Special Permit (§73-19) to permit the operation of a High School (UG 3) contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 403 Concord Avenue, Block 02573, Lot 87, Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over to June 29-30, 2020, at 10 A.M., for continued hearing.

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## REGULAR MEETING MONDAY-TUESDAY AFTERNOON JUNE 15-16, 2020, 2:00 P.M.

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

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## ZONING CALENDARS

## 2019-35-BZ

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

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

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

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M., for continued hearing.

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## 2019-196-BZ

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

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

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

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to July 27-28, 2020, at 10 A.M., for continued hearing.

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# MINUTES

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**2019-267-BZ**

APPLICANT – Eric Palatnik, P.C., for Rochdale Village, Inc., owner; CF Rochdale, LLC, lessee.

SUBJECT – Application September 19, 2019 – 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.

PREMISES AFFECTED – 165-98 Baisley Boulevard, Block 12495, Lot 2, 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 July 13-14, 2020, at 10 A.M., for decision, hearing closed.

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**2020-9-BZ**

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

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

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

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, Nos. 26-27

July 10, 2020

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# CALENDAR

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## REGULAR MEETING

**AUGUST 10-11, 2020, 10 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, August 10, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday August 11, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 179-10-BZ

APPLICANT – Akerman LLP, for E & R Duffield Associates, owner.

SUBJECT – Application January 17, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness on the cellar, first and second floors of a two-story commercial building which expired on January 1, 2020. C6-4.5 Special Downtown Brooklyn District.

PREMISES AFFECTED – 249 Duffield Street, Block 146, Lot 2, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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## APPEALS CALENDAR

### 2018-30-A

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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## ZONING CALENDAR

### 2018-124-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for Beacway Operating LLC, owner; Flywheel sports, lessee.

SUBJECT – Application July 26, 2020 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Flywheel Sports) to be in a portion of the cellar of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District, NYC Designated Interior Landmark Building.

PREMISES AFFECTED – 2130 Broadway aka 304-314 Amsterdam Avenue, 2124-2134 Broadway, 200-216 W75 Street, Block 1166, Lot(s) 35, 135, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
JUNE 29-30, 2020, 10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**16-36-BZ**

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

SUBJECT – Application February 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (BP) with accessory uses which expired on November 1, 2017; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue aka 1301 White Plains Road, Block 3880, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a variance pursuant to Z.R. § 11-411, previously granted by the Board, that permitted the operation of a gasoline service station and expired on November 1, 2017.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, with a continued hearing on May 4, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood.

The Premises are bounded by Westchester Avenue to the south, Leland Avenue to the west, and White Plains Road to the east, within a C2-2 (R5) zoning district, in the Bronx. With approximately 185 feet of frontage along Westchester Avenue, 24 feet of frontage along Leland Avenue, 148 feet of frontage along White Plains Road, and 13,500 square feet of lot area, the Premises are occupied by an existing gasoline service station with four gasoline pump islands, three accessory parking spaces and one accessible parking space, and accessory convenience store building (1,431 square feet of floor area).

The Board has exercised jurisdiction over the Premises since April 18, 1950, when, under the subject calendar number, the Board granted a variance, for a term of 15

years, to permit the erection and maintenance of a gasoline service station with accessory uses, on condition that the plot be leveled substantially to the grade of Westchester Avenue and be constructed of the arrangement and design as proposed on plans filed with the application, complying with the requirements of the Building Code in all respects; there be erected on the interior lot lines continuously from Leland Avenue to White Plains Road a substantial steel picket fence erected on a masonry base not less than 2' in height to a total of not less than 5'-6" except where the wall of the accessory building occurs; there be no windows in the rear wall of the accessory building; planting be along the Leland Avenue building line, along the rear line, along White Plains Road, and portions of Westchester Avenue, as indicated; suitable materials be used in such planting; concrete curbing not less than six inches high and six inches in width be maintained; along the spaces where planting adjoins the street building lines a steel fence not less than three feet in height be erected on a masonry base on the building lines for protection to the planting; carriageways and curb cuts be solely to Westchester Avenue, as proposed, consisting of three not over 30' in width each; pumps of the low approved type be erected not nearer than 12' to the street building line of Westchester Avenue; the number of gasoline storage tanks not exceed eight 550-gallon tanks; the Premises where not occupied by the accessory building, walls, planting, and pumps be paved with concrete or bituminous paving; such portable fire-fighting appliances be maintained within the accessory building as the Fire Commissioner directs; minor repairing with hand tools only is permitted under Section 7i, provided such repairing is within the accessory building only; signs be restricted to a permanent sign attached to the front façade of the accessory building and to the illuminated globes of the pumps, precluding all roof signs and all temporary signs but permitting the erection within the building line at two points as indicated of posts standard for supporting signs 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 feet; complete working drawings be submitted for approval by the Board before same are filed with the Department of Housing and Buildings; such plans be filed within three months; and, all permits be obtained and all work completed within one year, by April 18, 1951.

On September 19, 1950, under the subject calendar number, the Board approved plans as in substantial compliance with the resolution and permitted the installation of eight 550-gallon gasoline storage tanks as indicated thereon, the omission of the steel fence for the protection of planting beds along Westchester Avenue, the installation of steel windows glazed with wire glass and made self-closing along the rear wall as shown, and the maintenance of flood lights as indicated, on condition that in all other respects the resolution be complied with; all permits be obtained, and all work completed within one year, by September 19, 1951.

On September 18, 1951, under the subject calendar number, the Board further amended the resolution by adding



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# MINUTES

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that the number of 550-gallon gasoline storage tanks may be increased to a total of ten, to be installed where indicated on plans filed with the application; in view of the statement by the applicant that the work has been substantially completed, all permits required be obtained and all work completed within three months; a temporary certificate of occupancy may be issued as soon as all work has been completed, with the exception of the parking use then requested, which is subject to a new decision of the Borough Superintendent, dated August 20, 1951, under N.B. Application 1087-49, and set for public hearing on October 23, 1951.

On October 23, 1951, under the subject calendar number, the Board further amended the resolution by adding that the additional use of parking may be permitted, as proposed and indicated on plans filed with the application, on condition that in all other respects, the requirements of the resolutions be complied with; the parking area not be increased beyond that indicated on such plan; suitable bumpers be maintained for protection to the planting areas; the variance be for a term of five years from the date of the amended resolution; all permits required be obtained, and all work completed within the time as stated in the amended resolution adopted on September 18, 1951.

On October 27, 1953, under the subject calendar number, the Board further amended the resolution by adding that there may be two curb cuts to White Plains Road, each not exceeding 30 feet in width, substantially as indicated on plans filed with the application, and the existing iron fence and planting may be removed to permit carriage crossing through such curb cuts to the gasoline service station, except that the most northerly curb cut be located so no portion of such curb cut is within five feet of the lot line as prolonged at right angles to White Plains Road, on condition that in all other respects the resolution, including working drawings as approved, be complied with.

On July 24, 1956, under the subject calendar number, the Board extended the term for five years, to expire July 24, 1961, on condition that other than as amended the resolution be complied with in all respects; a new certificate of occupancy be obtained, and all work completed within six months, by January 24, 1957.

On September 26, 1961, under the subject calendar number, the Board extended the term, to expire on April 18, 1965, concurrently with the term of the adjacent gasoline service station, on condition that the use of milk vending machines on the Premises be discontinued and that a sign presently on the sidewalk be removed; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On September 14, 1965, under the subject calendar number, the Board extended the term for ten years, to expire on September 14, 1975, on condition that other than as amended the resolution be complied with in all respects, and a certificate of occupancy be obtained.

On April 23, 1968, under the subject calendar number, the Board further amended the resolution by adding that the gasoline service station may be altered and rearranged

substantially as shown on revised drawings filed with the application, on condition that other than as amended the resolution be complied with in all respects.

On November 1, 1977, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten years, to expire on November 1, 1987, and by adding that the planting may be omitted and the fence changed, substantially as shown on revised drawings filed with the application, on condition that other than as amended the resolution be complied with in all respects, and a certificate of occupancy be obtained within one year, by November 1, 1978.

On April 28, 1987, under the subject calendar number, the Board extended the term for ten years, to expire November 1, 1997, 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 year, by April 28, 1988.

On March 16, 1993, under the subject calendar number, the Board further amended the resolution, pursuant to Z.R. § 11-412, to permit the erection of a metal canopy over four new concrete self-service pump islands and the replacement of the existing accessory building with a smaller structure to accommodate a convenience store on condition that there be no parking on the sidewalks, the property be maintained free of graffiti and in substantial compliance with plans filed with the application; other than as amended the resolution be complied with in all respects; and substantial construction be completed within one year, by March 16, 1994.

On May 11, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to grant an extension of term, on condition that the term of the variance be limited to ten years, to expire on November 1, 2007; 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 May 11, 2000.

On October 22, 2002, under the subject calendar number, the Board waived its Rules of Practice and Procedures and extended the time to obtain a certificate of occupancy for one year, by October 22, 2003, on condition all lighting comply with the BSA approved lighting plan; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On March 18, 2008, under the subject calendar number, the Board extended the term for ten years, to expire

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# MINUTES

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on November 1, 2017, and permitted site modifications including the removal of southern curb cut on White Plains Road on condition that any and all work substantially conform to drawings filed with the application; the grant expire on November 1, 2017; the conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; all work be performed and a new certificate of occupancy be obtained within one year, by March 18, 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, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

On May 18, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedures and granted an extension of time to obtain a certificate of occupancy, to expire on May 18, 2011, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; a certificate of occupancy be obtained by May 18, 2011; all conditions from prior resolutions not specifically waived by the Board remain in effect; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term having expired November 1, 2017, the applicant now seeks an extension. Because this application was filed less 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)(2), of the Board's Rules to permit the filing of this application. Rule § 1-07.3(b)(2) requires a demonstration by the applicant that the use has been continuous since the expiration of the term and, absent a waiver of the Board's Rules, substantial prejudice would result. In response, the applicant provided gasoline delivery invoices to cover the period of November 2017 through the filing of the application, and states that significant financial commitments have been made to keep the gasoline service station in compliance with all applicable regulations and, absent a waiver of the Board's Rules, substantial prejudice would result.

Pursuant to Z.R. § 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. The applicant states that the gasoline service station operates 24 hours per day, seven days per week, and continues to be occupied by four pump islands and a 1,431 square foot accessory convenience store building.

Over the course of hearings, the Board raised concern regarding the potential for lighting at the Premises to

adversely impact adjacent properties and the applicant agreed to a condition that light shields will be installed on all site lighting to bring lumen level to zero (0.0) at the property line.

By letter dated February 9, 2020, the Fire Department states that a review of their records indicates that the Premises is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry-chemical) system. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated April 18, 1950, as amended through May 18, 2010, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten years, expiring November 1, 2027, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received May 7, 2020"- three (3) sheets; and *on further condition*:

That the term shall expire on November 1, 2027;

That light shields shall be installed and maintained on all site lighting to bring lumen level to zero (0.0) at the property line;

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. 16-36-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 March 11, 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 29, 2020.

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# MINUTES

## 853-53-BZ

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

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

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.

## 207-68-BZ

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

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

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north Newburg Street. Block 10315, Lot 0134. Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.

## 115-94-BZ

APPLICANT – Sheldon Lobel, P.C., for Irma Poretsky, 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

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

## 121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> Street Realty Corp, owner; Spa Osaka, Inc., lessee.

SUBJECT – Application January 11, 2018 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment (*Osaka Health Spa*) on the third floor and mezzanine level

of a six-story mixed used building, contrary to ZR §32-10, which expired on February 6, 2016; Waiver of the Rules. C6-4.5 Midtown Special District.

PREMISES AFFECTED – 37 West 46<sup>th</sup> Street, Block 1262, Lot 20, 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 July 27-28, 2020, at 10 A.M., for decision, hearing closed.

## 195-02-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corporation, owner.

SUBJECT – Application September 4, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility which expires on November 23, 2023; Amendment to permit an enlargement; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, Block 4471, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, 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 August 24-25, 2020, at 10 A.M., for continued hearing.

## 51-06-BZ

APPLICANT – Sheldon Lobel, P.C.,

SUBJECT – Application January 16, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a dance studio (UG 9) and a physical cultural establishment (*Push Fitness Club*) which expired on December 12, 2016; Amendment to permit a change in hours of operation for the PCE; Waiver of the Board’s Rules of Practice and Procedure. C1-2R2A zoning district.

PREMISES AFFECTED – 188-02 Union Turnpike, Block

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# MINUTES

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7266, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to August 10-11, 2020, at 10 A.M., for continued hearing.  
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**24-09-BZ**

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

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

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

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for continued hearing.  
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**162-09-BZ**

APPLICANT – Akerman LLP, for Steinway 30-33, LLC, owner.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (*Planet Fitness*) on the cellar, first and second floors of a two-story commercial building which expired on December 1, 2018; Waiver of the Board’s Rules of Practice and Procedure.

PREMISES AFFECTED – 30-33 Steinway Street, Block 00680, Lot 0032, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to August 24-25, 2020, at 10 A.M., for continued hearing.  
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## APPEALS CALENDAR

**2017-16-A thru 2017-19-A**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.  
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**2018-105-A**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 04699, Lot 22, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.  
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**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 19-20, 2020, at 10 A.M., for adjourned hearing.  
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**2019-281-A**

APPLICANT – New Cingular Wireless PCS, LLC, for Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a Forest Promenade Shopping Center, Block 1479, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.  
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## ZONING CALENDAR

**2018-145-BZ**

**CEQR #19-BSA-032Q**

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** – Application granted.

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# MINUTES

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## THE VOTE –

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

## THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 6, 2018, acting on DOB New Building Application No. 421087157, reads in pertinent part:

“[. . .]

3. Proposed Physical Culture Establishment is not permitted as-of-right within a C8-1 zoning district per Section ZR 32-10 and therefore requires a special permit from the Board of Standards and Appeals (BSA) pursuant to ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C8-1 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of an existing four-story, with cellars, commercial and community facility building, contrary to Z.R. § 32-10.

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 August 6, 2019, October 22, 2019, and April 1, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 13, Queens, recommends disapproval of this application citing concerns over traffic and circulation. The Board also received letters in opposition to this application from a New York City Council Member and a civic association, within whose districts the PCE is proposed, echoing the concerns of the Community Board.

The Premises are located on the northwest corner of Jericho Turnpike and Little Neck Parkway, within a C8-1 zoning district, in Queens. With approximately 190 feet of frontage along Jericho Turnpike, 53 feet of frontage along Little Neck Parkway, and 28,412 square feet of lot area, the Premises are occupied by an existing four-story, with cellars, commercial and community facility building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy

3,492 square feet of floor area on the first floor with the PCE reception, exercise areas, and a spa area with massage chairs, tanning booths, and a light therapy booth; and 14,134 square feet of floor area on the second floor with exercise areas equipped with exercise machines, locker rooms with showers, changing areas, and restrooms. The PCE is proposed to operate 24 hours per day, daily, as “Planet Fitness.”

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located within a commercial and community facility building and PCE use is consistent with the commercial character on Jericho Turnpike. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE will be located within a commercial building, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. The applicant further submits, in a certified engineer’s letter, that the PCE and the Premises as a whole were designed in such a way as not to impose any vibrations on any of the adjacent uses in the building. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood, that the PCE will be an asset to the surrounding area, and states that the volume of music in the PCE is kept to a minimum and excessive noise is not permitted.

The applicant states that a sprinkler system, and a fire alarm system with connection to a central monitoring station, will be maintained within the PCE space. By letter dated August 5, 2019, the Fire Department states that the fire alarm and combination (standpipe/sprinkler) systems are new installations and will be inspected by the Fire Department and DOB prior to building occupancy. A place of assembly application will also need to be filed with DOB. The Fire Department has no objection to the Board’s rendering a decision on the application, and the Bureau of Fire Prevention will continue to inspect these Premises when a final certificate of occupancy is issued. By letter dated January 28, 2020, the Fire Department added that the Bureau of Fire Prevention received plans for review of proposed parking stackers to be installed at the Premises. The owner’s representatives met with the Fire Department’s Technology Management Unit (“TMU”) and amended their plans addressing the Fire Department’s concerns regarding sprinkler protection, firefighter access, and locations of parking stackers.

# MINUTES

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA032Q, dated September 7, 2018.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 *to permit*, on a site located within a C8-1 zoning district, the operation of a physical culture establishment on portions of the first and second floors of an existing four-story, with cellars, commercial and community facility building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 25, 2020”- Sixteen (16) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 29, 2030;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-145-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 February 28, 2025;

THAT this approval is limited to the relief granted by

the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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## 2019-21-BZ

### CEQR #19-BSA-079K

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 14<sup>th</sup> Street, Block 7373, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 26, 2018, acting on Department of Buildings Alteration Type I Application No. 321074644, reads in pertinent part:

- “1) Proposed plans are contrary to zoning resolution section ZR 23-142 in that the proposed floor area ratio exceeds the maximum permitted.
- 2) Proposed plans are contrary to zoning resolution section ZR 23-142 in that the proposed lot coverage exceeds the maximum permitted.
- 3) Proposed plans are contrary to zoning resolution section ZR 23-142 in that the proposed open space is less than the minimum required.
- 4) Proposed plans are contrary to zoning resolution sections ZR 23-461a & 23-48 in that the proposed side yards are less than the minimum required.
- 5) Proposed plans are contrary to zoning resolution section ZR 23-47 in that the proposed rear yard is less than the minimum

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# MINUTES

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required.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district, the conversion and enlargement of an existing one-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.

A public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, with continued hearings on January 14, 2020, January 28, 2020, and April 2, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the east side of East 14th Street, between Gravesend Neck Road and Avenue V, within an R4 zoning district, in Brooklyn. With approximately 25 feet of frontage along East 14th Street, 100 feet of depth, and 2,500 square feet of lot area, the Premises are occupied by an existing one-story plus cellar single-family detached residence.

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

The existing single-family residence is a one-story plus cellar detached residence with 0.39 FAR (983 square feet of floor area), 61 percent of open space (1,517 square feet), 39 percent of lot coverage (983 square feet), two side yards with widths of 3'-8" and 3', and a rear yard with a depth of 34'-6". The applicant proposes to convert and enlarge the single-family detached residence resulting in a three-story plus cellar two-family detached residence with 1.27 FAR (2,447 square feet of floor area on the first and second floors and 729.18 square feet of floor area in the attic in an area with structural headroom between 5' and 8'), 47 percent of open space (1,175 square feet), 53 percent of lot coverage (1,326 square feet), two side yards with widths of 3'-8" and 3', and a rear yard with a depth of 20' at the first floor, and 25' at the second floor and above.

At the Premises, a maximum of 0.75 FAR (1,875 square feet of floor area) is permitted with an additional 20 percent (0.15 FAR) located directly under a sloping roof, a minimum of 55 percent of open space (1,375 square feet) is required, a maximum of 45 percent of lot coverage (1,125 square feet) is permitted, two side yards with minimum widths of 5 feet and 10 feet of total side yards, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-142, 23-461, 23-48, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 983 square feet to 1,255 square feet, and create a second floor with 1,192 square feet of floor area and a third

floor/attic with 1,191.67 gross square feet, of which 729.18 square feet is located in an area with between 5' and 8' of structural headroom and is considered floor area and 462.49 square feet of floor space located in an area with less than 5' of structural headroom and is not floor area.

The applicant represents that the proposed two-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the “Study Area”), finding that, of the 126 qualifying residences, 67 residences (53 percent) have an FAR greater than 0.75, ranging from 0.76 to 1.75, and 28 residences have an FAR of 1.27 or greater. The applicant submitted an open space/lot coverage study, demonstrating that 89 residences (71 percent) have more than the permitted 45 percent of lot coverage, ranging from 46 percent to 71 percent, and 38 of those residences have a lot coverage of 53 percent or greater. The applicant submitted a rear yard study demonstrating that, on the subject block, 38 interior lots (72 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 18 feet. The applicant provided a frontage study and represents that the as-built condition will be in context with the social block. The proposed enlargement includes an extension of the existing non-complying side yards, and, pursuant to a 1930 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA079K, dated June 29, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *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

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Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 *permit* the conversion and enlargement of an existing one-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio, 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 June 7, 2020” – twenty-six (26) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.27 FAR (2,447 square feet of floor area on the first and second floors and 729.18 square feet of floor area in the attic in an area with structural headroom between 5' and 8'), a minimum of 47 percent of open space (1,175 square feet), a maximum of 53 percent of lot coverage (1,326 square feet), two side yards with minimum widths of 3'-8" and 3', and a rear yard with minimum depths of 20' at the first floor and 25' at the second floor and above, as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of 50 percent or 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. 2019-21-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 March 16 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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**CORRECTION: This resolution adopted on June 29, 2020, under Calendar No. 2019-39-BZ, is hereby corrected to read as follows:**

**2019-39-BZ**

**CEQR #19-BSA-097K**

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 23-142 (open space, lot coverage and FAR) and 23-461(a) (side yard). R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2311 East 4<sup>th</sup> Street, Block 7156, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 23, 2019, acting on Department of Buildings Alteration Type I Application No. 321385693, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-142 in that the proposed Floor Area Ratio (FAR) exceeds the permitted 90%.
2. Proposed plans are contrary to Z.R. 23-142 in that the proposed Open Space is less than the required 55%.
3. Proposed plans are contrary to Z.R. 23-142 in that the proposed lot coverage exceeds the maximum required 45%.
4. Proposed plans are contrary to Z .R. 23-461 (a) in that the proposed side yard is less than the 5'-0" minimum.
5. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0”.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the enlargement of an existing one-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.

A public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, with continued hearings on November 19, 2019, February 11, 2020, and May 19, 2020, and then to decision on June 29, 2020. Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board also received one form letter in



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# MINUTES

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support of this application.

The Premises are located on the east side of East 4th Street, between Gravesend Neck Road and Avenue W, within an R4 zoning district and in the Special Ocean Parkway District, in Brooklyn. With approximately 50 feet of frontage along East 4th Street, 100 feet of depth, 5,000 square feet of lot area, the Premises are occupied by an existing one-story plus cellar single-family detached residence.

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

The existing single-family residence is a one-story plus cellar detached residence with 0.18 FAR (896 square feet of floor area), 82 percent of open space (4,104 square feet), 18 percent of lot coverage (896 square feet), two side yards with widths of 33'-1" and 11", and a rear yard with a depth of 39'-6". The applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 1.15 FAR (5,727 square feet of floor area), 52 percent of open space (2,600 square feet), 48 percent of lot coverage (2,400 square feet), two side yards with widths of 14' and 11", and a rear yard with a depth of 22'-5" at the first floor, 27' at the second floor, and 30' above. The applicant's initial proposal provided a lot coverage of 52 percent and, at the direction of the Board, revised the project to reduce the lot coverage to 48 percent.

At the Premises, a maximum of 0.75 FAR (3,750 square feet of floor area) is permitted with an additional 20 percent (0.15 FAR) located directly under a sloping roof, a minimum of 55 percent of open space (2,750 square feet) is required, a maximum of 45 percent of lot coverage (2,250 square feet) is permitted, two side yards with minimum widths of 5 feet and 13 feet of total side yards, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-142, 23-461, and 23-47. The applicant proposes to enlarge the floor area at the first floor, from 897 square feet to 2,400 square feet, and create a second floor with 2,190 square feet of floor area and a third floor/attic with 1,137 square feet of floor area.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and in an R4 zoning district (the "Study Area"), finding that, of the 99 qualifying residences, 68 residences (69 percent) have an FAR greater than 0.75, ranging from 0.76 to 1.68, and 19 residences have an FAR of 1.15 or greater. The applicant submitted an open space/lot coverage study, demonstrating that 32 residences have more than the permitted 45 percent of lot coverage, ranging from 46 percent to 58 percent, and 27 of those

residences have a lot coverage of 48 percent or greater. The applicant also submitted a rear yard study demonstrating that, on the subject block, 9 interior lots (33 percent) have rear yards with depths less than 30 feet, ranging from 29 feet to 13 feet. The applicant provided a frontage study and represents that the as-built condition will be in context with the social block. The proposed enlargement includes an extension of the existing non-complying 11"-wide side yard, and, pursuant to a 1929 Belcher Hyde Desk Atlas including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA097K, dated March 6, 2019.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing one-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio, open space, lot coverage, and rear yards contrary to Z.R. §§ 23-142 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 30, 2020" – twenty-four (24) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.15 FAR (5,727 square feet of floor area), a minimum of 52 percent of open space (2,600 square feet), a maximum of 48 percent of lot coverage (2,400 square feet), two side yards with minimum widths of 14' and 11", and a rear yard with minimum depths of 22'-5" at the first floor, 27' at the second floor, and 30' above, as illustrated on the Board-approved plans; and

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THAT removal of existing joists or perimeter walls in excess of 50 percent or 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. 2019-39-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 February 18, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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## 2019-75-BZ

### CEQR #19-BSA-118M

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

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 12, 2019, acting on Alteration Type I Application No. 123526620, reads in pertinent part:

“ZR 42-10: The proposed Day care center in Use Group 3 is not permitted as of right in zoning district M1-5B; BSA approval is required”.

This is an application under Z.R. §§ 73-19 and 73-03 to permit, in an M1-5B zoning district, the operation of a school, contrary to Z.R. § 42-00. This application is brought on behalf of Bright Horizons (the “School”), a child day care center.

A public hearing was held on this application on October 29, 2019, after due notice by publication in The City Record, with continued hearings on February 11, 2020, April 6, 2020, and June 2, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 2, Manhattan, recommends approval of this application.

The Premises are located on the east side of Broadway, between East 4th Street and Washington Place, within an M1-5B zoning district and in the NoHo Historic District, in Manhattan. With approximately 50 feet of frontage along Broadway, an irregular depth ranging between 100 feet and 138 feet, and 5,937 square feet of lot area, the Premises are occupied by an existing ten-story, with penthouse, mezzanine, sub-cellar, and cellar, mixed-use commercial and residential building.

The applicant proposes to convert the cellar level, first floor, and mezzanine for use by the School and, thus, seeks a special permit to allow the operation of a school in the subject zoning district, where schools are not permitted as of right.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10 definition of “school” because it will meet New York State licensing and related requirements.

With respect to Z.R. § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the School, within a district where the school is permitted as of right. The applicant represents that, to pursue the School’s programmatic needs, the School requires a site with 8,000 to 15,000 usable square feet over one to three floors with access from the lower level through the second floor only; a minimum of 4,000 usable square feet on the ground floor; two means of egress per floor; the ground floor be on grade or slightly above or below for ADA and infant/toddler evacuation; a location with the demographic profile and population density of either residential or commercial occupancy; vertical transportation between floors; nearby outdoor space; childcare use acceptable to a landlord; and blended rents \$55 to \$70 per usable square foot. The applicant surveyed, over the course of two years, 35 sites and represents that only 11 sites had ground floor space that exceeded the 4,000 square foot requirement, and all but one exceeded the rent range of \$55 to \$75 per square foot, ranging from \$125 to \$350 per square foot; only two of the sites had adequate square footage in total and the asking rent was beyond the possible criteria for school use. 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

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permitted as of right. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

Z.R. § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right. The applicant represents that the School is located within 400 feet of the boundary of a district where the School is permitted as of right. Specifically, the applicant notes that the Premises, to the west, is directly across Broadway from a C6-2 zoning district, less than 100 feet away, where school use is permitted as of right. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of a C6-2 zoning district. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic, and other adverse effects of the surrounding non-residential district. The applicant represents that the surrounding area does not contain manufacturing uses and does not have the potential adverse impacts associated with manufacturing uses. The subject area, and the subject blockfront, is entirely commercial or community facility (school use) in nature, similar to the surrounding blocks to the east and to the west. There is no heavy industrial truck traffic in the vicinity of the site and no excessive noise or noxious fumes from manufacturing uses. Thus, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the School will be located can be controlled so as to protect children traveling to and from the School. The applicant represents that there is no transportation provided by the School; children will be supervised upon arrival and departure by individuals who will bring them to the facility and children will not be exposed to vehicular hazards given this oversight. Additionally, the subject blockfront on which the site is located is not manufacturing oriented despite its M1-5B zoning classification, but is instead occupied by commercial and community facility uses, rather than manufacturing buildings, and are commonly found in commercial zoning districts where the School would be allowed as-of-right.

By letter dated May 26, 2020, the Department of Transportation (“DOT”) states that, following the City Environmental Quality Review Technical Memo Levels 1 and 2 Screening Assessment, traffic and pedestrian analyses were screened out. Based on their review of the Environmental Assessment Statement (“EAS”) and supplemental information including Levels 1 and 2 Screening Assessments, DOT concurs with the lead agency’s determination that detailed traffic and pedestrian analyses are not warranted. Therefore, the Board finds that the requirements of Z.R. § 73-19(d) are met.

By testimony at the public hearing on October 29, 2020, the Fire Department states that occupancy in the cellar by children under two years of age is not permitted in the proposed day care.

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

The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as an unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 19BSA118M, dated June 2, 2020. The EAS documents show that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

By letter dated March 10, 2020, the Department of Environmental Protection (“DEP”) states that, based on the results of the mobile- and stationary-source 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 regarding noise. By letter dated April 17, 2020, DEP states that, based on the results of the 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 regarding Air Quality. By letter dated May 12, 2020, DEP states that the April 2020 remedial action plan (“RAP”) proposes the design and installation of heating, ventilating and air-conditioning systems (HVAC) in accordance with the applicable New York City building codes (i.e., New York City Mechanical Code) for the daycare facility leased spaces; and the identification and sealing of all slab cracks, cuts or utility entries cracks on leased spaced slab floors with Land Science Technologies Retro-Coat 2-Part Caulk, Milamar Coatings, LLC – ICO UREA Guard Caulk, and Land Science Technologies - Retro-Coat Gel. The April 2020 construction health and safety plan (“CHASP”) addresses worker and community health and safety during construction. Based upon their review of the submitted documentation, DEP finds the April 2020 RAP and CHASP for the proposed project acceptable. BSA should instruct the applicant that, at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report should be submitted for DEP review and approval

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for the proposed project. The P.E. certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., the installation of HVAC systems; sealing of the basement slab, etc.).

By correspondence dated April 30, 2019, the Landmarks Preservation Commission (“LPC”) represents that there are no archeological concerns. By certificate of no effect (“CNE”) CNE-20-02568, dated March 27, 2020, LPC approved work consisting of exterior work at the storefront at the first floor of the west (Broadway) façade, including replacing a pair of modern brown-stained wood and glass doors, with a brown-stained wood and glass asymmetrical door assembly, featuring a smaller fixed door, and a larger operable door; painting the modern and historic metal storefront infill and surround black; installing a black-finished metal bracket sign, featuring off-white (Benjamin Moore “Atrium White,” or equivalent) painted acrylic lettering and a logo (“Bright Horizons Early Education & Preschool”) at the second northernmost modern metal storefront pier; installing a black-finished metal sign panel at the signband, featuring off-white painted acrylic lettering (“Bright Horizons”); installing vinyl circles and translucent film at a portion of the glass doors; and installing a translucent film at the bottom portion of the display windows, not to exceed 20% of the glazed area, as well as interior alterations at the first floor. LPC finds that the work will have no effect on significant protected features of the building.

By letter dated May 26, 2020, DOT represents that detailed traffic and pedestrian analyses are not warranted.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. the Board has determined that the proposed action will not have a significant adverse impact on the environment.

The applicant represents that the building is fully sprinklered and an approved interior fire alarm system—including manual pull stations, local audible and visual alarms, area smoke detectors, and connection to an FDNY-approved central system—will be installed in the entire school.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-19 and 73-03 *permit*, in an M1-5B zoning district, the operation of a school, contrary to Z.R. § 42-00; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 1, 2020”- four (4)

sheets; and *on further condition*:

THAT at the completion of the project a Professional Engineer (P.E.) certified Remedial Closure Report shall be submitted for DEP review and approval for the proposed project and shall indicate that all remedial requirements have been properly implemented (i.e., the installation of HVAC systems; sealing of the basement slab, etc.);

THAT a composite window-wall attenuation level of 33 dBA with a closed window condition shall be provided for the western façade fronting Broadway at the ground floor and mezzanine level to achieve an acceptable interior noise level of 45 dBA;

THAT to maintain a closed-window condition, an alternate means of ventilation shall be provided including, but not limited to, air conditioning or trickle vents;

THAT occupancy in the cellar by children under two years of age is not permitted;

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. 2019-75-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 February 7, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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**2019-184-BZ**  
**CEQR #20-BSA-002Q**

APPLICANT – Sheldon Lobel, P.C., for 45-20 83<sup>rd</sup> 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 83<sup>rd</sup> Street and 80-52 47<sup>th</sup> Street, Block 1536, Lot(s) 223 and 80, Borough of Queens.

**COMMUNITY BOARD #4Q**

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

THE VOTE –

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

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## THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 14, 2019, acting on Alteration Type I Application No. 420665818, reads in pertinent part:

“The proposed Use Group 3 school, is not permitted within an M1-1 zoning district, contrary to ZR 42-10 and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19”.

This is an application under Z.R. §§ 73-19 and 73-03 to permit, in an M1-1 zoning district, the operation of a school, contrary to Z.R. § 42-00. This application is brought on behalf of The Renaissance Charter School (the “School”), a kindergarten-through-sixth-grade charter school.

A public hearing was held on this application on November 26, 2019, after due notice by publication in The City Record, with continued hearings on February 4, 2020, March 3, 2020, June 2, 2020, and June 15, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda and Commissioner Otley-Brown performed inspections of the Premises and surrounding neighborhood.

The Premises are located at the terminus of 83rd Street and Witney Avenue, within an M1-1 zoning district, in Queens. With approximately 116 feet of frontage along 83rd Street, 338 feet of depth, and 44,437 square feet of lot area, the Premises are occupied by an existing one-story, vacant, warehouse building (approximately 41,320 square feet of floor area).

The applicant proposes to enlarge the existing building to a 63,264 square foot, four-story plus mezzanine UG 3 school building with a total FAR of 1.42.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10 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. Further, the applicant submitted the School’s Charter and notes that the School’s academic school year mirrors the public school year with a minimum of 190 days of full-time instruction, with classes held from 8:20 a.m. through 3:10 p.m., by competent teachers with a curriculum that offers English language arts, math, science, social studies, Spanish, arts, and project-based and experiential learning.

With respect to Z.R. § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the School, within a district where school use is permitted as of right. The applicant represents that, to pursue the School’s programmatic needs, a site for the development of the School requires the ability for new construction to meet the specifications of the School which include a full gymnasium and outdoor space, a location in close proximity to an

existing Renaissance Charter School (located approximately one mile away), and economic considerations including a favorable rent and security deposit. Thus, the applicant has demonstrated that its stated requirements related to size and configuration are justified by the School’s programmatic needs. The applicant represents that the School has conducted an exhaustive search for potential expansion sites and that the School several sites but that none of the sites were viable due to inadequate size, lack of gymnasium, financial infeasibility in relation to development of existing occupied sites, and lacks of lease options. Thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as of right. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

Z.R. § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right. The applicant states that the School is directly across 83rd Street from an R7A zoning district boundary line and is rear adjacent to an R6B zoning district boundary line, and notes that school uses are permitted as of right in R7A and R6B zoning districts. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of R7A and R6B zoning districts. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic, and other adverse effects of the surrounding non-residential district. The applicant submitted evidence that the predominant noise sources in the area of the Premises are vehicular traffic and rail movements, the proposed school would not double vehicular traffic on nearby roadways, and would not result in a perceptible increase in vehicular noise. The applicant conducted noise-level analysis to determine the level of building attenuation necessary to ensure that interior noise levels would fall within an acceptable range, and to determine if the proposed rooftop recreation area and third-floor terrace associated with the Premises would result in adverse impacts to surrounding receptors. The analysis determined that, pursuant to the passenger car equivalent noise screening, the School would not increase such existing noise values by greater than 100% and does not warrant further analysis. Further, noise impacts on the adjacent eight-story residential building located within a direct line-of-sight to the north of the Premises would not occur from either of the two proposed outdoor recreation areas for student use—a 5,110 square foot rooftop recreation area, located above the mezzanine level of the building and a terrace located along the northern portion of the third floor roof, with the implementation of a ten-foot high acoustical sound barrier/absorption panel fence with a noise reduction coefficient rating (NRC) of 1.0 to be installed along the western portion of the third-floor terrace. Additionally, to ensure acceptable interior noise levels within the school building, a composite window-wall attenuation of 28 dB(A)

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would be required on all building facades of the school building to achieve an acceptable interior noise level of 45 dB(A), and an alternate means of ventilation would be provided to maintain an interior noise level of 45 dB(A) with a closed window condition. Thus, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the School will be located can be controlled so as to protect children traveling to and from the School. The applicant represents that data was gathered from the existing Renaissance Charter School from emergency contact sheets and a survey of afterschool student yellow bus ridership for the applicable grade levels and, in response to Department of Transportation (“DOT”) School Safety comments, prepared a separate School Operations and Access Safety Plan. The applicant proposes safety measures for the School, which include a combination of geometric modifications, pavement markings, signage modifications, and traffic signal timing changes. Specifically, the applicant proposes an eight-foot sidewalk along the south side of Whitney Avenue between 83rd Street and Broadway at the request of DOT School Safety; to facilitate school crossings, an enhanced crosswalk is proposed across 83rd Street north of Whitney Avenue leading to ADA-compliant pedestrian ramps on the west and east sidewalks of 83rd Street; ADA-compliant pedestrian ramps would be provided at the southwest and southeast corners of 83rd Street and 45th Avenue, and all four corners of Broadway and Whitney Avenue; an appropriate traffic control would be installed at the intersection of Whitney Avenue and 83rd Street; “No Standing Anytime” areas are proposed along the east side of 83rd Street between 45th Avenue and Whitney Avenue, and the north and south sides of Whitney Avenue between Broadway and 83rd Street to aid vehicle turning maneuvers; 80 feet of “No Standing School Days” signage would be requested from 7 a.m. to 4 p.m. along the north side of Whitney Avenue to permit yellow school bus drop offs and pick-ups, and 110 feet of “No Standing School Days” signage would be requested from 7 a.m. to 4 p.m. along the west side of 83rd Street in front of the School for private vehicle drop-offs and pick-ups; based on the results of completed Vehicular Level of Service, the eastbound approach at 45th Avenue and Broadway would be restriped to include one ten-foot left/through lane and one ten-foot right-turn only lane between 83rd Street and Broadway; the centerline would be shifted north by two feet; parking would be removed on the north and south curb lanes along 45th Avenue between 83rd Street and Broadway; additionally, the westbound approach at Whitney Avenue and Broadway would be restriped to include one ten-foot left-turn only lane and one ten-foot through/right lane between 83rd Street and Broadway; Parking would be removed on the north curb lane along Whitney Avenue between Macnish Street and Broadway; and, signal timing modifications are proposed at the intersection of 45th Avenue and Broadway based on the results of the completed Vehicular Level of Service analysis.

With respect to the arrival and dismissal of students, the applicant proposes the addition of personnel to implement school safety measures including school crossing guards for the intersection of 83rd Street and 45th Avenue and at the intersection of 83rd Street and Whitney Avenue; school safety officers should be located at the southeast corner of 83rd Street and 45th Avenue to direct students across the southern portion of the intersection and away from the east side of 83rd Street; during school dismissal, a school safety officer should be located at the northeast corner of 83rd Street and Whitney Avenue to direct students traveling east through the intersection of 83rd Street and Whitney Avenue; and, staff at the school entrance to serve as escorts and greeters to direct students dropped off by car or bus to the main entrance—caregivers would be prohibited from parking and entering the building when using the No Standing School Days zones.

By letter dated March 3, 2020, the DOT School Safety states that it has no objection to this application and asks that the applicant provide DOT a draft of the Builders Pavement Plan for review as soon as it is available and prior to the formal submission of the Plan to the Department of Buildings by the applicant and notify DOT School Safety near the end of construction so that they can determine if additional traffic improvements or parking regulation changes are necessary.

Therefore, the Board finds that the requirements of Z.R. § 73-19(d) are met.

In response to Board questions regarding potential negative impact from the Long Island Railroad (“LIRR”) to the School, the applicant submitted an engineer’s statement attesting that, as part of initial site assessments of the existing conditions and structure, they did not witness any evidence of vibrational impacts anywhere in the property. The LIRR track is approximately 35 feet away from the property line and is at a substantially higher elevation. The energy from the train’s vibration traveling in the ground is substantially absorbed by the soil before reaching the building because of the distance as well as the densely compacted soil below the tracks. The new foundation plan incorporates 124, 7.625□, 80-ton capacity piles, drilled to a depth of 65 feet in compliance with the requirements of the latest NYC Building Code for seismic design. The above-noted distance factor from the tracks and a diligently planned foundation and structural design should ensure that no negative impact from any vibrations would be imposed on the building or the school use within it. The school building was properly designed and constructed to account for vibrations from adjacent LIRR and to avoid any negative impact on the school building or the school process.

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

The proposed special permit use will not interfere with any pending public improvement project.

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The project is classified as an unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 20BSA002Q, dated June 17, 2020. The EAS documents show that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

By letter dated December 17, 2018, the Landmarks Preservation Commission represents that the proposed project would not result in any potential for significant adverse impacts on historic or cultural resources.

By correspondence dated August 16, 2019, the Department of Parks and Recreation states that it has no comments about shadows.

By letter dated February 7, 2020, the Department of Environmental Protection (“DEP”), Bureau of Sustainability states, in pertinent part, that it has reviewed the January 2020 Site Investigation Report (Phase II) and Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”). The January 2020 RAP proposes the remediation of NYSDEC Spill# 1906766; the excavation, transportation and off-site disposal of soil in accordance with all applicable federal, state and local regulations; stockpiled soil will be covered with polyethylene sheeting; dust control; air monitoring; installation of a vapor barrier system consisting of 20-mil SilverBlack SR vapor barrier beneath the foundation slab of the new development (during Phase II only); and installation of an active sub-slab depressurization system (“SSDS”) during Phase 1 and 2. The January 2020 CHASP addresses worker and community health and safety during construction. Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA: DEP finds the January 2020 RAP and CHASP for the proposed project acceptable. BSA should instruct the applicant that at the completion of the project, a Professional Engineer (“P.E.”) certified Remedial Closure Report should be submitted for DEP review and approval for the proposed project. The P.E. certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; installation of SSDS, etc.).

By letter dated May 27, 2020, DEP states that, with respect to air quality, the proposed project has two industrial

sources within 400 feet: one, formerly paper and print processing, now vacant; the second site is formerly a dry-cleaning facility. A field investigation was conducted to ensure that there would be no potential nonpermitted industrial source emissions. The results of the air quality assessment performed according to City Environmental Quality Review Technical Manual have concluded that the project will not result in any potential for significant adverse impacts related to air quality. With respect to noise, DEP states that based on the results of mobile source analyses performed, project-generated vehicular traffic will not double on roadways and will therefore not increase vehicular noise. Noise measurements, at the rooftop level of the warehouse building within direct line-of-sight of the LIRR, shows no noise attenuation was required. (Note that the initial noise measurements were invalid due to high wind conditions. Therefore, the assessment was based on supplemental measurements.) The VRF (Variable Refrigerant Flow) and ERV (Energy Recovery Ventilation) HVAC system for the proposed project will comply with the NYC Noise Codes and will not result in any new stationary source of noise. The stationary analysis of the proposed outdoor recreational spaces (playgrounds on the third and fourth floor terrace areas) determines that noise outdoor recreational spaces on the proposed school building will result in an  $L_{eq}$  of 72.9 dB(A), therefore a window-wall attenuation of 28 dB(A) will be required to achieve 45 dB(A) interior noise levels. The results of the noise assessment performed according to the City Environmental Quality Review Technical Manual have concluded that the project will not result in any potential for significant adverse impacts related to noise.

By letter dated June 12, 2020, the Department of Transportation (“DOT”) states that, in order to verify the need for the proposed improvement measures identified in the EAS, additional safety measures, and to determine the extent to which future volume projections presented in the EAS, the applicant has committed to conducting a transportation monitoring program (“TMP”) which will include the following locations: 45th Avenue and Broadway; 45th Avenue and 82nd Street; 45th Avenue and 83rd Street; Broadway and Whitney Avenue; and Whitney Avenue and 83rd Street. The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; level of service analyses utilizing Synchro including progression and queuing analyses; traffic control study, topographic survey if necessary, and parking accumulation assessment. The TMP will be performed six months after the first year of school occupancy and after full occupancy. Prior to undertaking any TMP the applicant will prepare and submit a scope of work for DOT review and approval. The applicant will submit a report summarizing the finding of each TMP as well as all necessary materials for DOT’s review and approval. The applicant will also request school crossing guards from the New York Police Department for the intersection of 83rd Street and 45th Avenue, and 83rd Street and Whitney Avenue during school arrival and

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dismissal peak hours. In the absence of crossing guards, school safety officers will be assigned at both locations at the applicant's expense. The applicant has also committed to coordinating the following improvements with DOT prior to the opening of the School: construct a new sidewalk on the south side of Whitney Avenue between 83rd Street and Broadway; submit an application for the installation of an enhanced crosswalk across 83rd Street just north of Whitney Avenue with ADA-compliant pedestrian ramps to facilitate school crossings. If approved by DOT, the applicant will install the enhanced crosswalk prior to school opening; an appropriate traffic control will be studied and installed at 83rd Street and Whitney Avenue; modification to curbside parking regulations to facilitate vehicle maneuvers and school pick-up and drop-off activities on 83rd Street and Whitney Avenue; and installation of ADA-compliant pedestrian ramps at the southwest and southeast corners at 83rd Street and 45th Avenue, and all four corners of Broadway and Whitney Avenue. The applicant will be responsible for all costs associated with the crossing guards, design and installation of the proposed project-related improvements, TMP, and any subsequent measures recommended by the TMP as per DOT's direction. DOT will continue to participate in the review process related to proposed geometric reconfiguration, reconstruction of sidewalk/pedestrian ramps, stop control, enhanced crosswalk and construction drawings.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

The applicant represents that an approved interior fire alarm system shall be installed in the entire school, which complies with Chapter 9 of the 2014 NYC Building Code and NYC Fire Code and special inspection requirements of Chapter 17 of the NYC Building Code. Further, the entire space will have an automatic sprinkler system that complies with Chapter 9 of the 2014 NYC Building Code and NYC Fire Code. Spaces will be monitored by a central supervising station in accordance with Chapter 9 of the NYC Building Code.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-19 and 73-03 to *permit*, in an M1-1 zoning district, the operation of a school, contrary to Z.R. § 42-00; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received June 8, 2020"- twenty-one (21) sheets; and on

*further condition:*

THAT sound attenuation shall be provided as follows: exterior walls and windows shall provide a minimum composite window-wall attenuation of 28 dB(A) on all facades; to maintain an acceptable interior noise level of 45 dB(A) with a closed-window condition, an alternative means of ventilation shall be provided;

THAT a vapor barrier and sub slab depressurization system (SSDS) shall be installed and soil removal and disposal shall be conducted in accordance with NYSDEC regulations;

THAT a remedial closure report shall be submitted to DEP for review and approval prior to completion of the project;

THAT a ten-foot high acoustical sound barrier/absorption panel fence with a noise reduction coefficient rating (NRC) of 1.0 will be installed along the western portion of the third-floor terrace;

THAT all transportation measures as described in the Final EAS Chapter 16: Transportation Analysis and DOT Post-Approval Commitment Letter shall be implemented with final approval of measures to be determined by DOT;

THAT the School shall provide DOT School Safety a draft of the Builders Pavement Plan for review as soon as it is available and prior to the formal submission of the Plan to the Department of Buildings by the applicant and notify DOT School Safety near the end of construction so that they can determine if additional traffic improvements or parking regulation changes are necessary;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-184-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 February 7, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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**2019-187-BZ**

**CEQR #20-BSA-003R**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bricktown Pass LLC, owner; Furie Spa Inc., lessee.

SUBJECT – Application July 3, 2019 – 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.

PREMISES AFFECTED – 205 Bricktown Way, Block 7452, Lot 100, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 3, 2019, acting on DOB Alteration Type I Application No. 520380953, reads in pertinent part:

“Proposed Physical Culture Establishment in C4-1 zoning district is not permitted pursuant to ZR32-10 and requires a special permit from BSA per ZR73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C4-1 zoning district and in the Special South Richmond Development District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 7, 2020, after due notice by publication in *The City Record*, with a continued hearing on June 2, 2020, and then to decision on June 29, 2020. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located within a shopping mall containing four one-story commercial buildings, known as Bricktown Centre at Charleston, on the north side of Bricktown Way, between Tyrellan Avenue and Veterans Road West, within a C4-1 zoning district and in the Special South Richmond Development District, on Staten Island. The Premises are occupied by an existing one-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter,

the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 2,516 square feet of floor area on the first floor with the PCE reception and waiting area, massage rooms, treatment rooms, restrooms, and a break room. The PCE is proposed to operate as “Hand and Stone Massage and Facial Spa,” daily, from 9:00 a.m. to 10:00 p.m.

The applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for the practice of massage by New York State Licensed massage therapists. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and that the PCE will be an asset to the surrounding area. The applicant states that a sprinkler system is maintained within the PCE space. By correspondence dated April 7, 2020, the Fire Department states that The Premises have a fire suppression system (sprinkler), that was signed-off by DOB on May 22, 2017, and the annual testing is due in May, 2022, as per the rules and regulations of the Fire Department. Based upon the foregoing the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA003R, dated July 9, 2019.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the

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required findings under Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C4-1 zoning district and in the Special South Richmond Development District, the operation of a physical culture establishment on a portion of the first floor of an existing one-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received October 28, 2019”-four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 29, 2030;

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

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

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

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 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. 2019-187-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 February 18, 2025;

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

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

THAT the Department of Buildings must 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 29, 2020.

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## 2020-27-BZ

### CEQR #20-BSA-075X

APPLICANT – Sheldon Lobel, P.C., for Civil Concord Avenue LLC, owner.

SUBJECT – Application March 27, 2020 – Special Permit (§73-19) to permit the operation of a High School (UG 3) contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 403 Concord Avenue, Block 02573, Lot 87, Borough of the Bronx.

### COMMUNITY BOARD #8BX

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 12, 2020, acting on Alteration Type I Application No. 220714430, reads in pertinent part:

“Proposed change from Elementary grade school to High School is inconsistent with conditions set forth in BSA CAL NO: 34 12 BZ. File for new BSA Approval”.

This is an application under Z.R. §§ 73-19 and 73-03 to permit, in an M1-2 zoning district, the operation of a school, contrary to Z.R. § 42-00. This application is brought on behalf of The American Dream High School (the “School”), a charter high school.

A public hearing was held on this application on May 19, 2020, after due notice by publication in The City Record, with a continued hearing on June 16, 2020, and then to decision on June 29, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 1, the Bronx, recommends approval of this application. The Board also received one form letter in support of this application.

The Premises are located on the southwest corner of Concord Avenue and East 144th Street, within an M1-2 zoning district, in the Bronx. With approximately 100 feet of frontage along Concord Avenue, 100 feet of frontage along East 144th Street, and 10,000 square feet of lot area, the Premises are occupied by an existing three-story, plus cellar, school (Use Group 3) consisting of approximately 28,551 square feet of floor area (2.85 FAR) (32,276 gross square feet).

The Board has exercised jurisdiction over the Premises since April 16, 2013, when, under BSA Cal. No. 341-12-BZ, the Board granted a special permit, pursuant to Z.R. § 73-19, to permit a school to occupy an existing building, on condition that that any and all work shall 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; the school be limited to 28,551 square feet of floor area (2.85 FAR); any

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change in the use, occupancy, or operator of the school requires review and approval by the Board; the approved plans be considered approved only for the portions related to the specific relief granted; substantial construction be completed in accordance with Z.R. § 73-70; DOB not issue a Certificate of Occupancy until the applicant has provided it with Department of Environmental Protection (“DEP”) approval of the Remedial Closure Report; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The applicant proposes to establish a new high school program at the Premises. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10 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. Further, the applicant submitted the School’s Charter and notes that the School’s academic school year mirrors the public school year with a minimum of 190 days of full-time instruction from 8:45 a.m. to 3:45 p.m. by competent teachers with a curriculum that offers English language arts, math, science, social studies, Spanish, arts, physical education, and health.

With respect to Z.R. § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the school, within a district where the school is permitted as of right. The applicant submitted an analysis of the School’s programmatic needs, determining that approximately 30,000 square feet are required for the School’s projected enrollment of 300 students. In particular, the applicant states that the School’s critical timeframe, to open for the 2020–2021 academic year, placed further constraints on the School in its search for a site that is already built out as school space or able to be built out as school space, and within Community School District 7, which is the location of the School’s existing middle school and the community school district the school is authorized to operate within. Thus, the applicant has demonstrated that its stated requirements related to size and configuration are justified by the School’s programmatic needs. The applicant represents that the School has conducted an exhaustive search for potential expansion sites and that the School considered 30 sites but that none of the sites were viable due to unavailability or the cost of construction or necessary improvements. Thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as of right. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

Z.R. § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right. The applicant states that the School is approximately 27 feet from an R7-1 zoning district boundary line to the north and approximately 87 feet from an R7-1 zoning district boundary line to the south, and notes that school uses are permitted as of right in R7-1 zoning districts. The applicant submitted a radius diagram which reflects that the subject site is adjacent to an R7-1 zoning district. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district.

The applicant states that the proposed change of occupancy within the existing building from an elementary school to a high school will not result in any significant environmental impacts. With respect to noise, the applicant measured existing noise levels at an equivalent location and concluded that the level was below 70dBA and the existing building includes standard façade construction, the noise inside the building is similar to what was identified in the 2013 EAS of the project approved under BSA Cal. No. 341-12-BZ and CEQR No. 13BSA069X and the proposed modification would not result in a significant adverse noise impact. With respect to traffic, the applicant states that the 2013 EAS concluded that project-generated traffic would not double vehicular traffic on nearby roadways, and therefore would not result in perceptible increase in vehicular noise. Additionally, it was found that the school would not be considered a significant stationary source of noise. The 2013 EAS only required the determination of whether the ambient noise in the area could adversely affect the school occupants. Thus, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school. The applicant states that no significant impacts on traffic or pedestrian systems were found that would require mitigation. Specifically, a traffic analysis concluded that the AM peak hour (school arrival) would generate 65 vehicles per hour and the PM peak hour (school dismissal) would generate 27 vehicles per hour. A detailed assignment of trips in the AM peak hour was warranted, however, as per detailed assignment of project-generated vehicle trips, the highest number of incremental vehicle trips at an intersection was determined to be 36 vehicles per hour in the AM peak hour, which is below the CEQR Technical Manual analysis threshold of 50 trips at an intersection. A detailed traffic analyses was not warranted, and the proposed project is not expected to result in any significant adverse traffic impacts.

By letter dated May 18, 2020, the Department of Transportation (“DOT”) states that, while three uncontrolled school intersections on the block of the school, specifically

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at Concord Avenue and East 144th Street, Concord Avenue and East 143rd Street, and Jackson Avenue and East 144th Street, failed to warrant study, the applicant prepared Enhanced Crosswalk forms for each of these intersections and proposes to construct a full curb extension on the southeast corner of Concord Avenue and East 144th Street. Upon approval of the application and relocation of the school, the school shall notify DOT so that they can determine if traffic safety improvements or parking regulation changes are necessary. Therefore, the Board finds that the requirements of Z.R. § 73-19(d) are met.

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

The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as an unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 20BSA075X, dated May 27, 2020. The EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health. No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. The Board has determined that the proposed action will not have a significant adverse impact on the environment.

By letter dated May 19, 2020, DOT states that, based on their review of the EAS and supplemental information including Levels 1 and 2 Screening Assessments, DOT concurs with the lead agency's determination that a detailed traffic analyses is not warranted. In addition, based on their review of the pedestrian Levels of Service analysis, they determined that the proposed action would not result in any significant adverse pedestrian impacts. The applicant is committed to continue to work with DOT in accordance with standard agency practices to determine and implement the appropriate traffic control devices and safety improvement measures at uncontrolled crossings on the north and south legs of Jackson Avenue and East 144th Street, the east and west legs of Concord Avenue and East 144th Street, and the east and west legs of Concord Avenue and St. Mary's/East 143rd Street. The applicant will be responsible for all costs associated with this effort, as well as the installation of traffic control devices and safety improvement measures involving capital funding. Once the project is occupied, the applicant will conduct a monitoring

plan at these locations. Prior to conducting any monitoring, the applicant will submit a scope-of-work for the monitoring plan for DOT's review and approval, and will be responsible for all costs associated with the monitoring plan as well as any subsequent measures requiring capital improvements, including traffic signals and curb extensions. The applicant will work with DOT to ramps upgraded in accordance with standard agency practices for the non-ADA-compliant pedestrian ramps found at six study area locations.

By letter dated March 27, 2020, DEP states, in pertinent part, that the March 2020 Remedial Closure Report, which summarizes the remedial activities completed, including post-construction indoor air quality sampling, acceptable. Therefore, DEP has no objection to the issuance of any remaining permits (i.e., Certificate of Occupancy) by the New York City Department of Buildings that is related to this project.

By letter dated May 26, 2020, DEP states that, based on the results of the Air Quality analysis performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in significant adverse impact for air quality. The assessment includes the air quality from vehicular sources (mobile sources), HVAC and industrial emission sources (stationary sources). Further, based on the results of the Noise analysis performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in significant adverse impact for noise. The assessment includes the noise from vehicular sources (mobile sources).

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. the Board has determined that the proposed action will not have a significant adverse impact on the environment.

By correspondence dated May 19, 2020, the Fire Department states that inspections have been performed at these premises by units in the Bureau of Fire Prevention. These units are the Licensed Public Place of Assembly, Public Buildings Unit (Schools), Fire Alarm Inspection Unit and the Fire Suppression Unit. Reports from these units indicate that all rules and regulations of the Fire Department are in compliance and permits are current and, based upon the foregoing, the Department has no objection to the above-referenced application.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is *Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-19 and 73-03 to *permit*, in an M1-2 zoning district, the operation of a school, contrary to Z.R. § 42-00;

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on condition that all work, site conditions and operations shall conform to drawings filed with this application marked "Received June 19, 2020"- Nine (9) sheets; and on *further condition*:

THAT all transportation measures as described in the Final Environmental Assessment Statement Attachment D: Transportation (CEQR No. 20BSA075X) and School Safety Plan shall be implemented with final approval of measures to be determined by the Department of Transportation;

THAT once occupied the school shall notify the Department of Transportation so that they can determine if traffic safety improvements or parking regulation changes are necessary;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-27-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 January 10, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, June 29, 2020.

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## 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 October 5-6, 2020, at 10 A.M., for continued hearing.

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## 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

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

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## 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 57<sup>th</sup> Avenue, Block 1845, Lot 41, Borough of Queens.

### COMMUNITY BOARD #4Q

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 27-28, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-188-BZ

APPLICANT – Pryor Cashman LLP, for McDonald's USA LLC, owner.

SUBJECT – Application July 12, 2019 - 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.

PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, with frontages on East Gun Hill Road, Tenbroeck Avenue and Pearsall Avenue. Block 4617, Lot 40. Borough of the Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for continued hearing.

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**2019-205-BZ**

APPLICANT – Goldman Harris LLC, for Jean’s Place Housing Development Fund Corporation, owner.

SUBJECT – Application August 16, 2019 – Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 485 Van Sinderen Avenue, Block 3799, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
JUNE 29-30, 2020, 2:00 P.M.**

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

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**ZONING CALENDAR**

**2020-6-BZ**

APPLICANT – Law Office of Jay Goldstein, PLLC, owner.  
SUBJECT – Application January 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Strengthen Lengthen Tone*) to be located on portions of the first, third and fourth floors of an existing 13-story commercial building contrary to ZR 32-10. C5-2 zoning district.

PREMISES AFFECTED – 88 Madison Avenue, Block 00858, Lot 0017, 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 July 27-28, 2020, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 28-29

July 24, 2020

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## DIRECTORY

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551-37-BZ	233-02 Northern Boulevard, Queens
863-48-BZ	259-16 Union Turnpike, Queens
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**2020-55-BZ**

1284 East 19th Street, Block 6738, Lot(s) 0031, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the development of and eight story and cellar residential building contrary to ZR §23-47 (rear yard). R7A zoning district. R7A district.  
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**2020-56-A**

58-60 West 39th Street, Block 00840, Lot(s) 0081, 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. M1-6 and C5-3 Special Midtown District. M1-6 and C5-3 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING AUGUST 24-25, 2020, 10:00 A.M. and 2:00 P.M.

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NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, August 24, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday August 25, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 126-10-BZ

APPLICANT – Akerman LLP, for Breit Canarsie Owner LLC

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expires on October 26, 2020. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, Block 7920, Lot 5, Borough of Brooklyn

**COMMUNITY BOARD #18BK**

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### 193-13-BZ

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

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

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

**COMMUNITY BOARD #12BX**

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## APPEALS CALENDAR

### 2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28<sup>th</sup> Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28<sup>th</sup> Avenue a/k/a 25-92 41<sup>st</sup> Street, Block 684, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## ZONING CALENDAR

### 2017-142-BZ

APPLICANT – Alexander Levkovich, Esq., for George Greene, owner; Iglesia Misioneras De Evangelizacion 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 Evangelizacion 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**

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### 2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

**COMMUNITY BOARD #8BX**

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### 2019-201-BZ

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corp., owner; Les Fitness LLC DBA Willy B CrossFit, lessee.

SUBJECT – Application August 2, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*Willy B CrossFit*) located in the cellar of an existing two-story building contrary to ZR §31-10. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, Block 306, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### 2019-280-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC

SUBJECT – Application November 1, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (*SLT*) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies' Mile Historic District.

PREMISES AFFECTED – 137 Fifth Avenue, Block 00849,

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# CALENDAR

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Lot 0002, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**2019-307-BZ**

APPLICANT – Sheldon Lobel, P.C., for Havermeyer LLC, owner; Dimerock LLC d/b/a MetroRock Climbing Center, lessee.

SUBJECT – Application December 30, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (MetroROCK) to be located on portions of the cellar and first floors of proposed 23-story mixed-use building contrary to ZR §32-10. C4-3 zoning district located on the same zoning lot with the NYC Designated Landmark “The Dime Savings Bank of Williamsburg.

PREMISES AFFECTED – 277 South 5<sup>th</sup> Street a/k/a 263-279 South 5<sup>th</sup> Street, Block 2447, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**2020-5-BZ**

APPLICANT – Akerman LLP, for Dakkan Properties LLC, owner, 92 Fitness Crew NY6, LLC, lessee.

SUBJECT – Application January 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Orangetheory Fitness*) to be located on portions of the first floor of an existing eight-story mixed commercial and residential building contrary to ZR §42-10.

M1-4/R7A Special Long Island City Special Purpose District.

PREMISES AFFECTED – 21-10 44<sup>th</sup> Drive, Block 00078, Lot 7501, Borough of Queens.

**COMMUNITY BOARD #2Q**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

## REGULAR MEETING MONDAY-TUESDAY MORNING JULY 13-14, 2020, 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 33-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RCPI Landmark Properties LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application November 26, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness) which expired on January 11, 2020. C5-2.5 and C5-3 Midtown Special Purpose district. Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 630 5<sup>th</sup> Avenue aka 40-60 Rockefeller Plaza, 31-41 W. 50<sup>th</sup> Street, 32-40 W. 51<sup>st</sup> Street, Block 1266, Lot 1, Borough of Manhattan.

#### COMMUNITY BOARD #5M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on January 11, 2020.

A public hearing was held on this application on June 1, 2020, after due notice by publication in *The City Record*, and then to decision on July 13, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on an entire block frontage bounded by Fifth Avenue to the east, West 50th Street to the south, Rockefeller Plaza to the west, West 51st Street to the north, partially within a C5-2.5 zoning district and partially within a C5-3 zoning district, and in the Special Midtown District, in Manhattan. The subject physical culture establishment (“PCE”) is located on portions of the first (1,207 square feet of floor area), second (24,200 square feet of floor area), and third (42,680 square feet of floor area) floors of the existing 38-story commercial building.

The Board has exercised jurisdiction over the subject site since January 11, 2000, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the use of a portion of an existing building as a physical culture establishment, on

condition that all work substantially conform to drawings as they apply to the objection, filed with the application marked; 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 premises remain graffiti free at all times; all signage will comply with Zoning Resolution; the term of the special permit be for ten years commencing January 11, 2000, expiring January 11, 2010; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 73-70.

On October 26, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the special permit to extend the term for a period of ten years from January 11, 2010, to expire on January 11, 2020, on condition that the use and operation of the site substantially conform to the previously approved plans; the term of the grant expire on January 11, 2020; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to 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.

By letter dated April 6, 2012, the Board permitted a change in ownership and operating control of the PCE, from “Sports Club/LA” to “Equinox,” as in substantial compliance with the Board’s grant.

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

The applicant represents that the PCE continues to operate as “Equinox,” with the following hours of operation: Monday through Friday, 5:00 a.m. to 10:00 p.m., Saturday and Sunday, 7:00 a.m. to 7:00 p.m., and there have been no changes to the operation or the PCE facility.

By correspondence dated June 1, 2020, the Fire Department states that the Premises are protected by a fire alarm, standpipe system, and sprinkler system that has been tested to Fire Department rules and regulations and the Fire Department has no objection to this application.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated January 11, 2000, as amended through October 26, 2010, so

# MINUTES

that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring January 11, 2030, *on condition* that all work shall substantially conform to drawings as filed with this application, marked “Received February 6, 2020,” Seven (7) sheets; and *on further condition*:

THAT the term of the PCE shall be for ten years, expiring on January 11, 2030;

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 Premises shall remain graffiti free at all times;

THAT all signage shall comply with the Zoning Resolution;

THAT fire safety measures be maintained as shown on the Board-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 33-99-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by March 1, 2022;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2020.

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**CORRECTION: This resolution adopted on July 13, 2020, under Calendar No. 72-99-BZ, is hereby corrected to read as follows:**

## **72-99-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for PGREF/1633 Broadway Tower, L.P., owner; Equinox 50<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox Fitness)) which expires on January 11, 2020. C6-7 Midtown Special Purpose District.

PREMISES AFFECTED – 1633 Broadway, Block 1022, Lot 43, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on January 11, 2020.

A public hearing was held on this application on June 1, 2020, after due notice by publication in *The City Record*, and then to decision on July 13, 2020. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood.

The Premises are bounded by Broadway to the east, West 50th Street to the south, Eighth Avenue to the west, West 51st Street to the north, within a C6-7 zoning district, and in the Special Midtown District, in Manhattan. The subject physical culture establishment (“PCE”) is located on portions of the concourse level (8,100 square feet of floor space) and first cellar level (16,596 square feet of floor space) of the existing 48-story commercial building.

The Board has exercised jurisdiction over the subject site since January 11, 2000, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a PCE, 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 premises remain graffiti free at all times; all signage comply with Zoning Resolution; the term of the special permit be for ten years commencing January 11, 2000, expiring January 11, 2010; 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,

# MINUTES

substantial construction be completed in accordance with Z.R. § 73-70.

On April 27, 2010, the Board amended the special permit to extend the term for a period of ten years from January 11, 2010, to expire on January 11, 2020, on condition that the use and operation of the site substantially conform to the previously approved plans; any and all work substantially conform to drawings filed with the application; a certificate of occupancy be obtained by April 27, 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; the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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

The applicant represents that the PCE continues to operate as “Equinox,” and there have been no changes to the operation or the PCE facility, but seeks the addition of Sunday PCE operation for the following hours: Monday through Friday, 5:00 a.m. to 10:00 p.m., Saturday and Sunday, 7:00 a.m. to 7:00 p.m.

By letter dated March 12, 2020, the Fire Department states that the PCE has been inspected annually by the Bureau’s Licensed Public Place of Assembly (LPPA) unit and their current FDNY LPPA permit expires on September 23, 2020. The Premises have a fire suppression system (standpipe and sprinkler) and a fire alarm system that has been tested and has current FDNY permits. The Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated January 11, 2000, as amended through April 27, 2010, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring January 11, 2030, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 2, 2020”- five (5) sheets; and *on further condition*:

THAT the term of the PCE shall be for ten years, expiring on January 11, 2030;

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

THAT all services provided by the PCE to which New York State licensure is required shall be performed by individuals licensed to perform such service;

THAT the Premises shall remain graffiti free at all times;

THAT all signage shall comply with the Zoning Resolution;

THAT fire safety measures be maintained as shown on the Board-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 72-99-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by March 1, 2022;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2020.

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## 175-14-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, for 1162 Broadway LLC, owner.

SUBJECT – Application May 24, 2019 – Amendment of a previously approved Variance (§72-21) which approved the construction a new 14-story hotel building. The amendment seeks to change the use of the proposed building from hotel use to office use; Extension of Time to Complete Construction which expired on March 25, 2019; Waiver of the Board’s Rules. M1-6 Madison Square North Historic District.

PREMISES AFFECTED – 1162 Broadway, Block 829, Lot 28, Borough of Manhattan.

## COMMUNITY BOARD #5M

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

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings, dated September 3, 2019, acting on Application No. 122013908, reads in pertinent part: “Proposed Use Group 6B office use

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# MINUTES

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requires amendment to BSA variance (Cal No. 175-14-BZ).  
... 1. ZR 43-40 The maximum height of front wall in a M1-6 zoning district, on a wide street is 85'-0" or 6 stories, whichever is less. The proposed building does not comply.  
2. ZR 43-43 A 15'-0" setback is required at the maximum base height (Wide Street). The proposed building does not comply.  
3. ZR 43-43 at the maximum base height, a sky exposure plane of 5.6 to 1 is required. The proposed building does not comply."

The applicant seeks an amendment to a variance, previously granted by the Board under Z.R. § 72-21, which authorized the construction of a 14-story hotel, to change its use from hotel to offices, along with an extension of time to complete construction and a waiver of the Board's rules.

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, with a continued hearing on June 1, 2020, and then to decision on July 13, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 5, Manhattan, recommends approval of this application.

## I.

The Premises are located on the east side of Broadway, between West 27th Street and West 28th Street, in an M1-6 zoning district, within the Madison Square North Historic District, in Manhattan. They have 27 feet of frontage along Broadway, between 95 and 105 feet of depth, 2,475 square feet of lot area, and are currently vacant.

The Board has exercised jurisdiction over the Premises since March 24, 2015, when under the subject calendar number, the Board granted a variance to allow the construction of a 14-story hotel on condition that the bulk parameters of the proposed building be a maximum of 14 stories, a maximum of 24,677 square feet of floor area (9.97 FAR), a maximum building height of 150'-0" without setbacks, and, beginning at the second story at 20'-0" above curb level, open areas with widths of 2'-4 1/4" along the northern and southern side lot lines at the street wall, as reflected on the Board-approved drawings; and that all Department of Buildings and related agency applications filed in connection with the authorized use and bulk be signed off by the Department of Buildings and all other relevant agencies by March 24, 2019.

## II.

The applicant now proposes to change the use of the building shown in the Board-approved drawings from hotel use to office use and seeks an extension of time to complete construction and a waiver of the Board's rules to allow the late filing of this application. More particularly, the applicant seeks to construct a 13-story commercial building with 24,633 square feet of floor area (9.95 FAR), rising without setback to a height of 148'-0" (the "Proposed Building"), which represent slight reductions in floor area and height.

The applicant submits that an amendment to allow the Proposed Building is consistent with the Board's original variance grant and would not undermine any findings.

In support of this contention, the applicant notes that the Premises are still beleaguered by the same unique physical conditions present at the time of the original grant—to wit, the Premises continues to be narrow and small. The Premises have not since been enlarged. Furthermore, the applicant furnished a new as-of-right alternative showing a 15-story office building with 24,624 square feet of floor area (9.95 FAR) that would rise without setback to a base height of 73'-4" for 6 stories with 1,841 square foot floorplates and then set back at least 15 feet from Broadway, rising to a total height of 169'-4" with floorplates of 1,466 square feet on the upper stories. Because of the Premises' unique physical conditions, however, this as-of-right alternative would still suffer from an inadequate building design because of the small, inefficient floorplates on the upper stories with approximately 36 percent of the upper floorplates taken up by the elevator, stairs, and core. These inefficient floorplates would also only provide for 8 employees per floor, restrict layout flexibility, and limit window exposure. On the other hand, the Proposed Building would ameliorate these deficiencies in building configuration.

Second, the applicant submits that, because of the above unique physical conditions, as-of-right development would still not realize a reasonable return, and the applicant furnished an updated financial feasibility study that also considered the above as-of-right office building. Because projected occupancy for a hotel building have fallen since the Board's original grant and because an as-of-right office building reflects higher construction costs and reduced price per square foot on the inefficient upper stories, the financial feasibility study concludes that as-of-right development would still not realize a reasonable return.

Third, as to neighborhood character, the applicant notes that the bulk of the Proposed Building is entirely consistent with the surrounding area in the same manner as that originally approved. Additionally, the changed use from hotel to offices reflects a change from a use that now requires a special permit to a use that is as-of-right in an area characterized by medium and high-density commercial buildings, used for wholesale establishments, offices, eating-and-drinking establishments, and hotels. Furthermore, the Landmarks Preservation Commission issued a Certificate of Appropriateness for the Proposed Building on May 21, 2020.

Fourth, the applicant submits that the hardship discussed herein has not been created by the owner or a predecessor in title, especially considering the Premises have not been enlarged or subdivided.

Fifth, as reflected in the updated financial feasibility study, the applicant notes that the Proposed Building reflects the minimum variance necessary to overcome the hardships created by the Premises' narrow, small size.

Based on the foregoing, the Board finds that the evidence in the record continues to support the findings required to be made under Z.R. § 72-21 and that an extension of time to complete construction and a waiver of its rules are appropriate, and the Board finds that the

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# MINUTES

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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 March 24, 2015, so that as amended this portion of the resolution shall read: “to *permit* the construction of a 13-story commercial building; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received June 8, 2020”—8 sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be: a maximum of 13 stories, a maximum of 2,4633 square feet of floor area (9.95 FAR), a maximum building height of 148’-0” without setback, and a side yard of 2’-4”, as illustrated on the Board-approved drawings;

THAT a certificate of occupancy, also indicating this approval and calendar numbers (“BSA Cal. Nos. 175-14-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 April 16, 2025;

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

THAT the approved 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, July 13, 2020.

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## **551-37-BZ**

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

## **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to October 6-7, 2020, at 10 A.M., for continued hearing.

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## **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 October 6-7, 2020, at 10 A.M., for adjourned hearing.

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## **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 October 20-21, 2020, at 10 A.M., for continued hearing.

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## **334-78-BZ**

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.

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

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

## **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to October 6-7, 2020, at 10 A.M., for continued hearing.

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## **389-85-BZ**

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

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

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

## **COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to October 6-7, 2020, at 10 A.M., for continued hearing.

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## 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 October 6-7, 2020, at 10 A.M., for continued hearing.

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## 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 86<sup>th</sup> Street, Block 1531, Lot 40, 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 August 11-12, 2020, at 10 A.M., for decision, hearing closed.

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## 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

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

11-12, 2020, at 10 A.M., for decision, hearing closed.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to September 15-16, 2020, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 2018-201-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Elbi Cespedes, lessee.

SUBJECT – Application December 28, 2018 – 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. PREMISES AFFECTED – 46 Kissel Avenue, Block 0078, Lot 0021, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings, dated November 30, 2018, acting on New Building Application No. 520360582, reads in pertinent part:

“The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

- A. No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.
- B. Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code.”

This is an application under General City Law § 36 to permit, in an R3X zoning district, the construction of a two-story with cellar, two-family residence that does not front on a mapped street.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City*

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*Record*, with continued hearings on April 20, 2020, and June 15, 2020, and then to decision on July 13, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood, and Community Board 1, Staten Island, recommends approval of this application.

The Premises are located on the west side of Kissel Avenue, between Amelia Court and Delafield Place, in an R3X zoning district, on Staten Island. With approximately 21 feet of frontage along Kissel Avenue, an irregular depth ranging between 181 feet and 220 feet, and 13,807 square feet of lot area, the Premises are currently vacant.

The applicant represents that the proposed residence will be built on one tax lot that is a part of a part of a larger zoning lot with the tax lot to the south (lot 22) for which no relief is sought pursuant to this application.

The applicant states that Kissel Avenue is a final mapped street paved to a width of approximately 38 feet and that the subject site will be accessed by a proposed 21-foot wide driveway that terminates in a 30' by 30' frontage space. The applicant submits that the site will comply with all applicable provisions of the Zoning Resolution, including, but not limited to, all Lower Density Growth Management Area requirements and a minimum of five accessory parking spaces and have 0.395 FAR, less than the 0.50 required in an R3X zoning district.

At hearings, the Board requested clarity on the location of the proposed six accessory parking spaces and the historical circumstances surrounding the creation of this tax lot.

In response, the applicant provided revised proposed site plans which note that the six accessory spaces will be located two at the rear of the existing home and four adjacent to and within the garage for the proposed home and are in compliance with all pertinent Fire Code requirements. The applicant also provided historical materials including the 1953 City Planning use map, a 1970 certificate of occupancy for the residence on tax lot 22, a linen tax map for the subject block, and historical maps of the subject site ranging from 1874 to 1936. The applicant represents that these materials demonstrate that the subject tax lot was created prior to the enactment of the 1961 Zoning Resolution, has remained vacant for a minimum of 50 years, and meets the zoning requirements for minimum lot area.

The applicant represents that a Builders Pavement Plan ("BPP"), proposing to construct to the front of the residence a new three-inch asphaltic concrete topping and a new 1/4-inch expansion joint with premolded neoprene filler and elastometric sealant, as well as repair the existing curb cut, was filed with the New York City Departments of Buildings.

The applicant submits that development of the proposed building does not require the structure to directly front on a legally mapped street as the fire apparatus access road (driveway) that will provide access to the home will have an unobstructed width of more than 20 feet and will be compliant with the provisions of the Fire Code § 503.2.4.2.

By letter dated June 2, 2020, the New York City

Department of Environmental Protection ("DEP") states that based on DEP maps, there in an existing 20"-diameter sanitary sewer and an 8"-diameter City water main in Kissel Avenue between Delafield Place and Amelia Court. The Drainage Plan for the subject lot shows the 10" and 24" sanitary sewers and 10'-6" x 4'-6" storm sewer in Kissel Avenue between Delafield Place and Amelia Court. The applicant submitted a Topographical Survey, dated February 20, 2020, which shows 60'-0" width of the mapped Kissel Avenue between Delafield Place and Amelia Court, from which 50'-0" is available for the installation, maintenance, and/or reconstruction of the future and existing sewers and water main. The proposed sanitary and storm will be discharged as per the certified Site Connection Proposal. It is anticipated that the water connection, connected to the 8" City water main in Kissel Avenue, and the proposed sanitary storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the DEP has no objections to the proposed GCL § 36 application.

By correspondence dated June 15, 2020, the Fire Department states that it reviewed the application and, based upon the submitted plans and applications, the Fire Department has no objection to the application.

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 30, 2018, acting on New Building Application No. 520360582, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 28, 2020"- One (1) sheet; and *on further condition*:

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. 2018-201-A"), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by April 29, 2025;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2020.

## 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

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 25-26, 2020, at 10 A.M., for decision, hearing closed.

## 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

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 25-26, 2020, at 10 A.M., for decision, hearing closed.

## 2019-82-A

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019– 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 district.

PREMISES AFFECTED – 430 St. Marks Place, Block 16, Lot 120, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to October 6-7, 2020, at 10 A.M., for adjourned hearing.

## 2020-11-A

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

SUBJECT – Application January 17, 2020 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 301 Park Avenue, Block 1304, Lot(s) 1001-1004, 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 September 15-16, 2020, at 10 A.M., for decision, hearing closed.

## ZONING CALENDAR

### 2019-93-BZ

#### CEQR #19-BSA-132K

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 12, 2019, acting on Alteration Application No. 321386040, reads in pertinent part: “The proposed plans are contrary to ZR Section 24-11 in that the proposed floor area and FAR exceeds the maximum permitted. The proposed plans are contrary to ZR Section 24-35 in that the proposed side yard is less than the minimum required. The proposed plans are contrary to ZR Section 25-31 in that the proposed parking spaces are less than the minimum required. The proposed plans are contrary to ZR Section 24-36 in that the proposed rear yard is less than the minimum required. The

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proposed plans are contrary to ZR Section 24-34 in that the proposed front yard is less than the minimum required.”

This is an application for a variance under Z.R. § 72-21 to permit—in an R2 zoning district—the development of a two-story, with cellar, house of worship that would not comply with zoning regulations for floor area (Z.R. § 24-11), front yards (Z.R. § 24-34), side yards (Z.R. § 24-35), rear yards (Z.R. § 24-36), or parking (Z.R. § 25-31).

This application is brought by Khal Zichron Avrohom Yaakov (the “House of Worship”), a non-profit religious corporation.

A public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, with continued hearings on February 4, 2020, and April 21, 2020, and then to decision on July 13, 2020.

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

Community Board 14, Brooklyn, recommends approval of this application on condition that the applicant effect a fence along the lot line upon request of the adjacent property owner and requests that the Board and the Department of Buildings pay special attention to fire and building safety codes as they pertain to capacity and egress. The Board also received testimony in support of this application.

The Premises are located on the east side of Bedford Avenue, north of Avenue K, in an R2 zoning district, in Brooklyn. With approximately 38 feet of frontage along Bedford Avenue, 100 feet of depth, and 3,750 square feet of lot area, the Premises were improved with a two-story residential building with 2,091 square feet of floor area (0.55 FAR) (the “Building”).

To address the House of Worship’s programmatic needs, the applicant proposes to enlarge the Building to 4,126 square feet of floor area (1.1 FAR) with a front-yard depth of 3’-9”, side-yard depths of 3’-0” to the south and 10’-3” and 6’-6” to the north, a rear-yard depth of 11’-11”, and no off-street parking spaces (the “Proposed Building”). The Proposed Building could not be constructed as of right at the Premises because floor area cannot exceed 3,750 square feet (1.0 FAR), *see* Z.R. § 24-11; front-yard depths must be at least 15’-0”, *see* Z.R. § 24-34; side-yard depths must be at least 8’-0”, *see* Z.R. § 24-35; rear-yard depths must be at least 30’-0”, *see* Z.R. § 24-36; and 23 off-street parking spaces (at a rate of 1 per 10 for the rated capacity of the largest assembly room) would be required, *see* Z.R. § 25-31.

Accordingly, the applicant requests the relief set forth herein.

### III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21, and the Board acknowledges that the applicant, as an educational institution, is entitled to deference

under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution’s application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

#### A.

Consistent with Z.R. § 72-21, the applicant submits that the House of Worship’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.

In support of this contention, the applicant provided a report on the House of Worship’s programmatic needs. To accommodate its congregation, the House of Worship would require sufficient space to hold five services per day during the week at the hours of 6:20 a.m., 7:30 a.m., 2:45 p.m., 6:30 p.m., and 9:30 p.m. There would also need to be two separate sets of worship and study spaces to accommodate daily study classes and lectures that overlap in time with these prayer schedules. A multipurpose room would also be necessary for child daycare services and for small-scale accessory events.

Enlarging the Building as of right could not accommodate these programmatic needs because it would result in an insufficient building envelope: 2,227 square feet of floor area (0.59 FAR) with a small kitchen and multipurpose room in the cellar to accommodate 89 people; a main sanctuary for 77 people at the first floor along with an entryway, elevator, and bathroom; and an ancillary sanctuary space for 86 people at the second floor along with an entryway, elevator, and bathroom. Parking spaces for 9 automobiles would also be required. These facilities would frustrate the House of Worship’s program.

Instead, with the waivers requested herein, the Proposed Building would accommodate the House of Worship’s programmatic needs. The cellar-level multipurpose room would accommodate 128 people with a small kitchen, trash storage, bathroom, coatroom, and mikvah. The first floor would hold a 228-person main sanctuary along with a lobby, bathroom, and elevator. The second floor, open to below, would house 170-person ancillary sanctuary space along with a lobby area and restroom.

Accordingly, Board finds that the House of

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Worship's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

## B.

Because the House of Worship is a non-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

## C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to public welfare. In support of this contention, the applicant studied the surrounding area, finding it characterized by residences with a few community facilities.

As to bulk, the applicant submits that the Proposed Building would not alter neighborhood character or adversely affect adjacent properties. As to height, the applicant's streetscape study reflects that the proposed height of the building, which is as of right, comports with those of surrounding buildings. As to the rear yard, the applicant studied rear yards in the vicinity, finding many obstructed by garages and other structures, reducing any potential effect on adjacent properties.

In response to questions from the Board, the applicant notes that the Proposed Building will be fully sprinklered and connected to a central station connection and that all levels will be accessible to all congregants by elevator and equipped with accessible facilities.

The Fire Department states, by correspondence dated April 21, 2020, that it has no objection to this application.

To address Board questions about the massing of the Proposed Building with respect to the northern side yard, the applicant reduced the Proposed Building's bulk at the front, thereby increasing the size of the proposed side yard to maintain the existing width of 10'-6" at the front.

The applicant further submitted a restrictive declaration ensuring that, at an adjacent property owner's request, a 6-foot-high black picket fence would be erected along adjacent property lines. The applicant further proposes minimum-6-foot-high landscaping along the rear lot line.

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

the public welfare.

## D.

The applicant notes that meeting the House of Worship's programmatic needs presents practical difficulties or unnecessary hardship. This situation was not created by the House of Worship or a predecessor in title but are instead inherent in the House of Worship's need to meet its religious program. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

## E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right enlargement would not meet the House of Worship's programmatic needs because, among other things, it would not provide sufficient space for the House of Worship's congregation. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

## IV.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA132K (July 13, 2020).

The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

## V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved,* that the Board of Standards and Appeals does hereby *issue* a Negative Declaration

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prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. § 72-21 to *permit*—in an R2 zoning district—the development of a two-story, with cellar, house of worship that would not comply with zoning regulations for floor area (Z.R. § 24-11), front yards (Z.R. § 24-34), side yards (Z.R. § 24-35), rear yards (Z.R. § 24-36), or parking (Z.R. § 25-31); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received April 24, 2020”—Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 4,126 square feet of floor area (1.1 FAR), a minimum front-yard depth of 3’-9”, minimum side-yard depths of 3’-0” to the south and 10’-3” and 6’-6” to the north, a minimum rear-yard depth of 11’-11”, and no off-street parking spaces, as illustrated on the Board-approved drawings;

THAT the term of this grant shall be for one year, expiring July 13, 2021;

THAT the building shall be constructed with walls with a STC rating of 50 and windows with an STC rating of 32, at minimum;

THAT street trees and landscaping shall be provided and maintained in top-rate condition, as illustrated on the Board-approved drawings;

THAT a refrigerated trash storage room shall be provided in the cellar;

THAT no catering or banquet-hall services shall be provided on the property;

THAT the structure shall be reviewed by a structural engineer and by the Department of Buildings to ensure its adequacy, safety, and stability;

THAT a restrictive declaration, committing to install a fence along a side lot line upon a neighboring property owner’s request, has been recorded against the property (City Register File No. 2020000171284) substantially conforming to the form and substance of the following:

Declaration, made as of the \_\_ day of April, 2020, by Naftali Leshkowitz, residing at 943 East 24th Street, Brooklyn NY, acting in his capacity as an officer of Khal Zichron Avrohom Yaakov (hereinafter collectively referred to as the “Declarant”);

WITNESSETH

WHEREAS, the Declarant is the fee owner of certain real property located in the City and State of New York, Borough of Brooklyn, designated as Block 7607, Lot 13 on the Tax Map of the City of New York, commonly known by the street address 3203 Bedford Avenue (the “Premises”); and

WHEREAS, Declarant has applied to the New York City Board of Standards and Appeals (the “Board”), under BSA Calendar Number 2019-93-

BZ, for a variance in connection with the construction of a new two-story and cellar synagogue on the Premises in an R2 zoning district.

WHEREAS, the Board raised concerns regarding the impact of the synagogue use on the adjoining neighbors designated as Block 7607, Lots 11 and 15 on the Tax Map of the City of New York, commonly known by the street addresses 3207 Bedford Avenue and 3199 Bedford Avenue, respectively (collectively known as the “Neighbors”); and

WHEREAS, the Board requested that the Declarant erect a fence along the shared property lines with the Neighbors. The Neighbors submitted written testimony requesting that said fences not be erected; and

WHEREAS, the Board has directed the Declarant to file the instant Declaration in response to the concerns raised by the Board and to protect the interests of the Neighbors, in the event circumstances change; and

NOW, THEREFORE, in consideration of the issuance of a variance by the Board, the Declarant does hereby declare, create, impose and establish the following:

1. Upon written request of any neighbor along any common property line, Declarant will erect, within 60 days of said written request, a 6 foot high metal picket fence along the shared lot line with the requesting neighbor;
2. The Premises shall be held, sold, transferred and conveyed subject to the restrictions and obligations which are for the purpose of satisfying the concerns of the Board and protection the interests of the Neighbors and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Premises or any part thereof;
3. Failure to comply with the terms of this declaration may result in the revocation of the underlying variance; and
4. This declaration shall be recorded at the city register’s office against the Premises.

IN WITNESS WHEREOF, Declarant has made and executed the forgoing restrictive declaration as of the date hereinabove written.

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-93-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 January 13, 2022;

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, July 13, 2020.

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## 2019-165-BZ

### CEQR #19-BSA-143K

APPLICANT – Law Office of Jay Goldstein, PLLC, for Zev Brachfeld, owner.

SUBJECT – Application June 3, 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); §23-461(a) (side yard); and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1375 East 26<sup>th</sup> Street, East side of East 26<sup>th</sup> Street between Avenue M and Avenue N. Block 7662, Lot 14. Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 23, 2019, acting on Alteration Type I Application No. 321386255, reads in pertinent part:

- “1 - Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceed 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-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””.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two-story plus cellar single-family, semi-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 Z.R. §§ 23-141, 23-461(a), and 23-47.

A public hearing was held on this application on

February 4, 2020, after due notice by publication in *The City Record*, with continued hearings on April 2, 2020, and June 16, 2020, and then to decision on July 13, 2020. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board also received three form letters in support of this application as well as one form letter objecting to this application and citing concerns over potential overcrowding in the community, loss of air space, and the decrease in quality of neighborhood homes.

The Premises are located on the east side of East 26th Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn. With approximately 30 feet of frontage along East 26th Street, 100 feet of depth, and 3,000 square feet of lot area, the Premises are occupied by an existing two-story plus cellar, single-family semi-detached residence.

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

The existing single-family residence is a two-story plus cellar semi-detached residence with 0.47 FAR (1,410 square feet of floor area), an OSR of 157% (2,221 square feet of open space), one side yard with a width of 7'-11", and a rear yard with a depth of 4'-7" at all floors. The applicant proposes a horizontal enlargement in the rear of the building resulting in a two-story with cellar semi-detached residence with an FAR of 0.84 (approximately 2,500 square feet of floor area), an OSR of 69% (1,722 square feet of open space), a rear yard with a depth of 20' at all floors, and two side yards with widths of 7'-11" and 0' at all floors. The applicant proposes to enlarge the floor area at the first floor, from 779 square feet to 1,278 square feet, and the second floor, from 631 square feet to 1,222 square feet.

At the Premises, a maximum of 0.50 FAR (1,500 square feet of floor area) is permitted, a minimum of 150% OSR (2,250 square feet of open space assuming a complying 0.50 FAR) is required, two side yards with minimum widths of five feet, with ten feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required pursuant to Z.R. §§ 23-141, 23-461(a), 23-48, and 23-47.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two- family homes within 400 feet of the Premises and with the same relevant bulk regulations (the “Study Area”) finding that of the 113 qualifying residences, 51 (45 percent) have a lot coverage of 40% or greater and 26 (23 percent) have a lot coverage of 43% or greater. As to FAR, 96 residences (85 percent) within the Study Area have an FAR greater than 0.50, and

# MINUTES

28 residences (25 percent) have FAR greater than 0.84.

The applicant submitted a rear yard study demonstrating that, on the subject block of the 38 qualifying residences, 13 lots have rear yards with a depth of less than 30' and 8 lots have rear yards with depths of less than 20'.

The proposed enlargement includes an extension of the existing non-complying side yards, and, pursuant to the 1930 and 1950 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a another residence in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances.

In response to the Board's comments at hearings and community concerns regarding the proposed project, the applicant reduced the requested enlargement from both the front and the rear of the residence to just the rear, resulting in the reduction of the proposed floor area from 2,745.80 square feet to 2,499.95 square feet, the proposed FAR from 0.92 to 0.84, and an increase in the proposed OSR from 59% to 69%. The applicant further represented that this reduction in the proposed enlargement would better blend in with the neighborhood and not impair use or development of the area.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA143K, dated July 13, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story plus cellar single-family semi-detached residence that does not comply with zoning regulations for FAR, OSR, side yards, and rear yards contrary to Z.R. §§ 23-141, 23-461(a), and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "June 16,

2020"- seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum floor area of 2,499.95 square feet; a maximum FAR of 0.84; a minimum open space of 69%; two side yards with minimum widths of 7'-11" and 0'; a rear yard with a minimum depth of 20'-0" at all floors, as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-165-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 May 6, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2020.

## 2019-267-BZ

### CEQR #20-BSA-030Q

APPLICANT – Eric Palatnik, P.C., for Rochdale Village, Inc., owner; CF Rochdale, LLC, lessee.

SUBJECT – Application September 19, 2019 – 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.

PREMISES AFFECTED – 165-98 Baisley Boulevard, Block 12495, Lot 2, Borough of Queens.

### COMMUNITY BOARD #12Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated September 12, 2019, acting on DOB Alteration Type I Application No. 421795427, reads in pertinent part:

"Proposed Physical Culture Establishment (PCE) is not permitted as-of-right in C4-2 zoning districts and is contrary to section ZR 32-10. Therefore, the



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# MINUTES

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proposed PCE requires a BSA Special Permit pursuant to ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C4-2 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of an existing two-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on June 16, 2020, after due notice by publication in *The City Record*, and then to decision on July 13, 2020. Commissioner Sheta performed an inspection of the site and surrounding neighborhood. Community Board 12, Queens, recommends approval of this application. The Board also received one form letter in support of this application.

The Premises are located within a shopping center, known as “Rochdale Center,” on the northwest corner of Baisley Boulevard and Guy R Brewer Boulevard, within a C4-2 zoning district, in Queens. With approximately 4,672,960 square feet of lot area, the Premises are occupied by an existing two-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 19,545 square feet of floor area on a portion of the second floor with the PCE reception, exercise areas, locker rooms with restrooms and showers, staff areas, offices, and storage spaces. The PCE began operation on November 23, 2019, as “Crunch Fitness,” with the following hours of operation: 5:00 a.m. to 11:00 p.m., Monday through Thursday, 5:00 a.m. to 10:00 p.m., Friday, and 7:00 a.m. to 7:00 p.m., weekends.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located inside a commercial shopping center, which accommodates commercial uses such as PCEs. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance

of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE is located within a commercial building, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include suspended acoustic ceiling tiles, a suspended gypsum board ceiling and an exposed structure; floor finishes with 1/2"-thick sound underlay and rubber flooring, and 1-1/2"-thick sound underlay and rubber floorings in other areas, unfinished concrete slabs, vinyl composite tiles and glazed porcelain tiles. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it occupies a space in an already active shopping center that contains a large parking lot to accommodate all the shoppers driving to the site, and the PCE would be located in a space where a PCE use is appropriate, away from residents, schools and other uses where minimum pedestrian activity is preferred.

The applicant states that a sprinkler system, and a fire alarm system will be maintained within the PCE space. By correspondence dated June 9, 2020, the Fire Department states that a note has been added to the plans that the proposed new fire alarm system for the PCE space will be connected the main building fire alarm panel, once work has been completed for both systems. A Public Assembly application must be filed and approved with the Department of Buildings and an operating permit obtained prior to occupancy of the PCE space. Based upon the foregoing the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-030Q, dated September 13, 2019.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*,

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# MINUTES

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on a site located within a C4-2 zoning district, the operation of a physical culture establishment on a portion of the second floor of an existing two-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 9, 2020”- Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 23, 2029;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-267-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 February 28, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2020.

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## **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 November 10, 2020, at 10 A.M., for continued hearing.

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## **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 6-7, 2020, at 10 A.M., for continued hearing.

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## **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 6-7, 2020, at 10 A.M., for continued hearing.

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## **2019-171-BZ**

APPLICANT – Eric Palatnik, P.C., for 1610 Eastchester Road LLC, owner.

SUBJECT – Application June 11, 2019 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R6 and M1-1 zoning districts. PREMISES AFFECTED – 1610 Eastchester Road aka 1490 Williamsbridge Road, Block 4081, Lot 4, Borough of Bronx.

### **COMMUNITY BOARD #10BX**

**ACTION OF THE BOARD** – Laid over to October 20-21, 2020, at 10 A.M., for continued hearing.

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
JULY 13-14, 2020, 2:00 P.M.**

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

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**ZONING CALENDAR**

**2019-191-BZ**

APPLICANT – Law Office of Lyra Altman, for Jonathan  
Weinberger & Zipporah Caroline Weinberger, owners.

SUBJECT – Application July 16, 2019 – 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.

PREMISES AFFECTED – 1485 East 21<sup>st</sup> Street, Block  
7657, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to October  
6-7, 2020, at 10 A.M., for continued hearing.

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**2019-261-BZ**

APPLICANT – Law Office of Lyra J. Altman, for 956-964  
LLC, owner.

SUBJECT – Application September 10, 2019 – 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.

PREMISES AFFECTED – 960 East 23<sup>rd</sup> Street, Block  
7586, Lot71, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to  
November 10-11, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 30-31

August 7, 2020

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## DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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# DOCKETS

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New Case Filed Up to July 27-28, 2020

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**2020-57-BZ**

179 27th Street, Block 00657, Lot(s) 0053, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §44-42. M1-2D M1-2D district.

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**2020-58-A**

10 Jasmine Way, Block 00695, Lot(s) 216, 217, Borough of **Staten Island, Community Board: 1**. Application filed pursuant to General City Law (“GCL”) 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R1-2 zoning district. R1-2 district.

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**2020-59-A**

12 Jasmine Way, Block 00695, Lot(s) 0216, Borough of **Staten Island, Community Board: 1**. Application filed pursuant to General City Law (“GCL”) 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R1-2 zoning district. R1-2 district.

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**2020-60-A**

180 Ashland Place, Block 2095, Lot(s) 25,26,29,7501, Borough of **Brooklyn, Community Board: 2**. Application filed pursuant to General City Law (“GCL”) 35, to allow the proposed development of a property within the mapped but unbuilt portion of a street; Waiver of the applicable height and setback regulations pursuant to 72-01 (g). C6-4 Special Downtown Brooklyn District. C6-4 district.

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**2020-61-BZ**

342-346 East 104th Street, Block 1675, Lot(s) 30, 31, 32, 33, Borough of **Manhattan, Community Board: 11**. Variance (§72-21) to permit the development of a school (UG 3) (East Harlem Scholars Academy Charter School) contrary to underlying bulk requirements. R7A, C2-5/R8A zoning districts. R7A, R8A/C2-5 district.

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

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# CALENDAR

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## REGULAR MEETING

**SEPTEMBER 14-15, 2020, 10:00 A.M. and 2 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, September 14, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday September 15, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## ZONING CALENDAR

### **2019-67-BZ**

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

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

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

**COMMUNITY BOARD #15BK**

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### **2020-35-BZ**

**APPLICANT** – Bryan Cave Leighton Paisner LLP, for 4201 Main Street LLC, owner.

**SUBJECT** – Application April 15, 2020 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C1-2/R6 and R6 zoning district.

**PREMISES AFFECTED** – 136-18 Maple Avenue, Block 5135, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

## REGULAR MEETING MONDAY-TUESDAY MORNING JULY 27-28, 2020, 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 115-94-BZ

APPLICANT – Sheldon Lobel, P.C., for Irma Poretsky, 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

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

#### THE VOTE –

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

Negative:.....0

#### THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 9, 2018, acting on DOB Alteration Type I Application No. 321801056, reads in pertinent part:

“The subject property is an existing auto repair U.G. 16 which is not permitted as-of-right within an R6A zoning district. As per ZR 11-411, request extension/waiver for an automotive repair shop located in a R6 district.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a variance pursuant to Z.R. § 11-411, previously granted by the Board, that permitted the operation of an automotive repair shop and expired on July 30, 2016.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, with continued hearings on April 6, 2020, and June 29, 2020, and then to decision on July 27, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application on condition that the term be for two years; hours of operation be limited to 9 a.m. to 6 p.m., Monday to Saturday; there be no parking of vehicles on the sidewalk; there be no body work, fender work, or painting done on Premises; and, trash dumpsters be stored inside until immediately prior to pickup. The Board also received two letters in objection to

the application and citing concerns regarding the parking of vehicles on the sidewalk.

The Premises are located on the west side of Bedford Avenue, between Cortelyou Road and Clarendon Road, within an R6A zoning district, in Brooklyn. With approximately 100 feet of frontage along Bedford Avenue, 100 feet of depth, and 10,000 square feet of lot area, the Premises are occupied by an existing one-story, with cellar, building with two automotive service establishments and automotive parts repair and sales establishment.

The Board has exercised jurisdiction over the Premises since July 22, 1924, when, under BSA Cal. No. 562-24-BZ, the Board granted a variance permitting the construction and maintenance of a public garage for more than five motor vehicles. On March 16, 1946, under BSA Cal. No. 562-24-BZ, the Board amended the grant to approve a change in use from a public parking garage to automobile display, sales, and service.

On July 30, 1996, under the subject calendar number, the Board approved an application under Z.R. §§ 11-412 and 11-413 permitting a change in use from automobile sales and service (Use Group 16C) to automotive sales with repair (Use Group 16), and legalization of the installation of a partition separating the spaces, for a term of ten years, on condition that the Premises be kept free of graffiti; there be no parking of vehicles on the sidewalks; signs be limited to those specified on BSA approved plans; the hours of operation be limited to 9 a.m. to 6 p.m., Monday through Saturday, to minimize any potential impacts to adjacent residential uses; trash dumpster be stored inside the building until immediately prior to pickup; there be no body, fender work, or spray painting done on the Premises; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed within four years.

On November 18, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term for ten years from the expiration of the prior grant, to expire on July 30, 2016, 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 term expire on July 30, 2016; the site be maintained free of debris and graffiti; the hours of operation be: Monday through Saturday, 9 a.m. to 6 p.m.; the conditions appear on the certificate of occupancy; all signage comply with C1 zoning 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, 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.



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# MINUTES

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The term having expired July 30, 2016, the applicant now seeks an extension. Because this application was filed less 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)(2), of the Board's Rules to permit the filing of this application. Rule § 1-07.3(b)(2) requires a demonstration by the applicant that the use has been continuous since the expiration of the term and, absent a waiver of the Board's Rules, substantial prejudice would result. In response, the applicant provided photographs of the Premises in operation to cover the period of July 2016 through the filing of the application, and states that absent a waiver of the Board's Rules the establishments would have to close and substantial prejudice would result.

Pursuant to Z.R. § 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.

Over the course of hearings, the Board raised concern regarding the parking of vehicles on the sidewalk, the storage of tires outside of the buildings, and the presence of excess signage.

In response, the applicant amended the plans to show fixed tire racks inside the building and provided an operational plan and restrictive declaration committing to maintenance of the Premises and operations therein. The operational plan states, in pertinent part, that: the hours of operation are limited to 9 a.m. to 6 p.m., Monday through Saturday; upon the first employees' arrival, temporary bollards, affixed with signs reading "no parking" are placed on both ends of the sidewalk at the Premises, as well as at the curb cut of the loading bays; when a customer arrives, they are directed by staff to pull immediately into the establishment, at which point an employee will move the car further in, as necessary; vehicles will not leave the establishment until the owner is present to retrieve them; owners will take their vehicles inside the establishment and drive off immediately; tire racks will be fixed to the ground and/or the wall to ensure that tires cannot be stored on the street.

In order to ensure compliance with this operational plan, the applicant submits that a restrictive declaration will be recorded against the property. The restrictive declaration states, in consideration of the Board's approval of the Application, that the 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 ensure that the façade of the Premises is maintained in a state of good repair;
2. Declarant shall ensure that no tires or other supplies are stored on the sidewalk, and that all materials and supplies are stored within the building on the Premises;
3. Declarant shall ensure that no vehicles being serviced by the Existing Use are parked on

- the sidewalk in front of the Premises;
4. Declarant shall use best efforts, including all remedies available to it at law, to prevent vehicles from parking on the sidewalk in front of the Premises when the Existing Use is closed;
5. Declarant shall use best efforts, including all remedies available to it at law, to ensure the prompt removal of any vehicles parked on the sidewalk in front of the Premises when the Existing Use is closed;
6. Declarant shall remain in full compliance with all other conditions set forth by the Board in its resolution granting the Application;
7. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
8. 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, for such time as the Premises is used pursuant to the Application;
9. Failure to comply with 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 Application."

The Applicant represents that they have applied for City street trees to be planted in front of the Premises as an additional measure to deter sidewalk vehicle parking.

By letter dated January 12, 2020, the Fire Department states that a review of their records indicates that the Premises is current with its permits for the use as a motor vehicle repair shop and storage of tires. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

At hearing, in response to Board and community concerns, the Board stated that a shorter, one year and six months, extension of term is appropriate to ensure compliance with the terms of the resolution.

Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated July 30, as amended through November 18, 2008, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of one year and six months, expiring March 11, 2022, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "July 21, 2020"- four (4) sheets; and *on*

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*further condition:*

THAT the term shall expire on March 11, 2022;

THAT street trees shall be planted or the applicant shall apply for a revocable consent for benches;

THAT the hours shall be limited to 9 a.m. to 6 p.m., Monday through Saturday;

THAT there shall be no parking on the sidewalk at any time;

THAT there shall be no storage or display of tires on the sidewalk;

THAT there shall be no repair work performed on the sidewalk;

THAT no auto body, fender, or spray work shall be performed on the Premises;

THAT trash shall be stored in a dumpster inside the building until immediately prior to pickup;

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

THAT all signage shall comply with C1 zoning regulations;

THAT a restrictive declaration shall be recorded against the property in the Office of the City Register substantially conforming to the form and substance of the following:

“THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020, is entered into by IRMA PORETSKY (the “Declarant”), with an address at 43 Ardsleigh Place, Monroe Township, New Jersey 08831.

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 2470 Bedford Avenue, and designated as Block 5167, Lot 40 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. 115-94-BZ (the “Application”), that the New York City Board of Standards and Appeals (the “Board”) grant an extension of a previously-granted variance, under New York City Zoning Resolution (“ZR”) § 11-41, to permit the continued use of an automotive services establishment with accessory sales at the Premises contrary to ZR §§ 22-10 (Uses Permitted As of Right), within an R6A zoning district (the “Existing Use”) for a term expiring July 30, 2026; 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 a certificate of occupancy 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 ensure that the façade of the Premises is maintained in a state of good repair;
2. Declarant shall ensure that no tires or other supplies are stored on the sidewalk, and that all materials and supplies are stored within the building on the Premises;
3. Declarant shall ensure that no vehicles being serviced by the Existing Use are parked on the sidewalk in front of the Premises;
4. Declarant shall use best efforts, including all remedies available to it at law, to prevent vehicles from parking on the sidewalk in front of the Premises when the Existing Use is closed;
5. Declarant shall use best efforts, including all remedies available to it at law, to ensure the prompt removal of any vehicles parked on the sidewalk in front of the Premises when the Existing Use is closed;
6. Declarant shall remain in full compliance with all other conditions set forth by the Board in its resolution granting the Application;
7. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
8. 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, for such time as the Premises is used pursuant to the Application;
9. Failure to comply with 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 Application; and

IN WITNESS WHEREOF, Declarant has made and executed this Declaration as of the date hereinabove written.”

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 115-94-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 March 11, 2022;

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

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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 27, 2020.

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## 121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> Street Realty Corp, owner; Spa Osaka, Inc., lessee.

SUBJECT – Application January 11, 2018 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment (*Osaka Health Spa*) on the third floor and mezzanine level of a six-story mixed used building, contrary to ZR §32-10, which expired on February 6, 2016; Waiver of the Rules. C6-4.5 Midtown Special District.

PREMISES AFFECTED – 37 West 46<sup>th</sup> Street, Block 1262, Lot 20, Borough of Manhattan.

### COMMUNITY BOARD # 5M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on February 6, 2016.

A public hearing was held on this application on June 1, 2020, after due notice by publication in *The City Record*, and then to decision on July 13, 2020. Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the north side of West 46<sup>th</sup> Street, between Avenue of the Americas and Fifth Avenue, within a C6-4.5 zoning district, and in the Special Midtown District, in Manhattan. The subject physical culture establishment (“PCE”) is located on portions of the third floor and third floor mezzanine level (2,033 square feet of floor area) of the existing six-story, with cellar, mixed-use residential and commercial building.

The Board has exercised jurisdiction over the subject site since February 6, 1996, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a PCE,

on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the building be sprinklered in accordance with BSA approved plans; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the special permit be limited to a term of ten years to expire on February 6, 2006; 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 substantial construction be completed in accordance with Z.R. § 73-70.

On February 5, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the special permit for ten years, to expire on February 6, 2016, on condition that the use and operation of the site substantially conform to the BSA-approved drawings associated with the prior approval; the conditions be stated on the certificate or occupancy; there be no change in ownership or operating control of the PCE without prior approval from the Board; Local Law 58/87 compliance be as reviewed and approved by DOB; 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.

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

Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. In accordance with § 1-07.3(b)(2), the applicant provided sales tax statements for the PCE to continuously cover the period from the expiration of the term through the filing of the application, and states that, absent a waiver of the Board’s Rules to permit the filing of this application, the PCE would suffer substantial prejudice.

The applicant represents that the PCE continues to operate as “Spa Osaka,” and there have been no changes to the operation or the PCE facility, and the PCE operates Monday through Saturday, 10:00 a.m. to 12:00 a.m., and closed Sunday.

By correspondence dated April 9, 2020, the Fire Department states that the Premises have a fire suppression (sprinkler) and fire alarm system that were inspected by the Fire Department and have current permits. Based upon the foregoing, the Department has no objection to the

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# MINUTES

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application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated February 6, 1996, as amended through February 5, 2008, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring February 6, 2026, *on condition* that all work shall substantially conform to drawings as filed with this application, marked “Received July 6, 2020,” Three (3) sheets; and *on further condition*:

THAT the term of the PCE shall be for ten years, expiring on February 6, 2026;

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

THAT all services provided by the PCE to which New York State licensure is required shall be performed by individuals licensed to perform such service;

THAT all signage shall comply with the Zoning Resolution;

THAT fire safety measures be maintained as shown on the Board-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 121-95-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 March 2, 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, July 27, 2020.

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## **122-95-BZ**

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

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

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

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M., for continued hearing.

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## **27-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner; Brooklyn Banya c/o Alona Kruglak, lessee.

SUBJECT – Application December 27, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Banya*) which expired on October 16, 2016; Amendment Waiver of the Rules. C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 602-04 Coney Island Avenue, Block 5361, Lot 21, Borough of Brooklyn.

### **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to September 15-16, 2020, at 10 A.M., for continued hearing.

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## **55-06-BZ**

APPLICANT – Rampulla Associates Architects, LLP, for Nadine Street, LLC, owner.

SUBJECT – Application March 12, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on May 14, 2017; Waiver of the Rules. C1-1/R3-2 (NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, Block 2242, Lot(s) 92, 93, 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 September 14-15, 2020, at 10 A.M., for decision, hearing closed.

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# MINUTES

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## 23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M., for adjourned hearing.

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## 120-13-BZ

APPLICANT - Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M. for continued hearing.

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## APPEALS CALENDAR

## 2018-190-A

APPLICANT – Richard Lobel, P.C., for 18 Union St. LLC, owner.

SUBJECT – Application November 26, 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 R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district.

PREMISES AFFECTED – 32-18 Union Street, Block 4954, Lot 35, Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M. for continued hearing.

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## 2019-182-A

APPLICANT – Dominic V. DeSantis – McLaren Engineering Group, for Therese Braddick, New York City department of Parks and Recreation.

SUBJECT – Application June 27, 2019 – Variance pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, waiver of Sections G304.2, Item 6 (no new construction to be located seaward of the Mean High Tide in the V-Zone) and G304.2 Item 2 (The lowest portion of the lowest horizontal structural member of the lowest floor shall be at or above design flood elevation).

PREMISES AFFECTED – 1 Marina Road, Block 1789, Lot 65, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M. for continued hearing.

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## 2019-282-A thru 2019-291-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cord Meyer Development, owner.

SUBJECT – Application November 8, 2019 – Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district.

PREMISES AFFECTED – 18-26 to 18-50 Bay Lane, Block 5872, Lot 102, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M. for continued hearing.

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# MINUTES

## 2019-295-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tarnoff, for Sutton 58 Holding Company LLC, owner.

SUBJECT – Application November 15, 2019 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58<sup>th</sup> Street, Block 1369, Lot 34, Borough of Manhattan.

### COMMUNITY BOARD #6M

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 24-25, 2020, at 10 A.M., for decision, hearing closed.

## ZONING CALENDAR

## 2018-192-BZ

### CEQR #19-BSA-064M

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 24, 2018, acting on Alteration Type I Application No. 121186947, reads in pertinent part:

“1. ZR 23-861: The proposed glazed windows and doors facing rear lot line do not comply with the minimum distance for legally required windows for natural light and ventilation as required by ZR 23-861 and shall seek a variance at the BSA pursuant to ZR 72-20.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit the legalization of a conversion of an existing mixed-use commercial and residential semi-detached building to a single-family residence (Use Group

“UG” 2) which does not comply with zoning requirements relating to the minimum distance for legally required windows for natural light and ventilation, contrary to Z.R. § 23-861.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on March 3, 2020, and June 30, 2020, and then to decision on July 27, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood.

The Premises are located on the west side of Lenox Avenue, between West 121st Street and West 122nd Street, within a C1-4 (R7-2) zoning district, and in the Mount Morris Park Historic District, in Manhattan. With approximately 25 feet of frontage along Lenox Avenue, 100 feet of depth, and approximately 2,500 square feet of lot area (2,486.5 square feet), the Premises are improved with a four-story plus cellar mixed-use commercial and residential semi-detached building.

At the Premises, the cellar level is occupied by an accessory fine art studio with storage and utility rooms; the first floor with a private, non-commercial art gallery, powder room, mechanical room and entry hall; the second floor with a powder room, sitting room, art display corridor, and a storage room; the third floor with a kitchen, living room, powder room, laundry room, and an open terrace at the rear; and, the fourth floor with three bedrooms, two bathrooms, and storage. The applicant proposes to add partitions in the cellar to separate the areas designated as an accessory fine art studio and storage and utility rooms.

The current certificate of occupancy permits a UG 6 commercial art gallery in the cellar level and first floor, a UG 3 non-commercial art gallery on the second and third floors, and one UG 2 apartment/dwelling unit on the fourth floor; however, the entirety of the third and fourth floors are being used entirely as a single-family home. The windows at the third and fourth floor of the building are 21'-10" from the rear lot line on this interior lot. However, because the building is on a short dimension of the block and within 100 feet of the corner, no rear yards are required for residential uses pursuant to Z.R. §§ 23-541 and 23-542. The applicant seeks a waiver of Z.R. § 23-861 to legalize the existing third and fourth floor window conditions, as they are habitable residential floors and require a distance of 30 feet from the rear lot line for natural light and ventilation.

The applicant represents this proposal meets all applicable findings of Z.R. § 72-21. To begin, the applicant submits that there are unique physical conditions inherent in the Premises that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district. The applicant seeks relief to legalize the conditions on the third floor of the building, which in order to comply with the provisions of the Zoning Resolution, would require substantial work to arrange the windows in a compliant manner, including extensive demolition and restructuring of the rear façade of the

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existing building. As of right plans demonstrate that in order to achieve the necessary light and air requirements, skylights above the first and third floors at the rear of the building would need to be installed and the rear wall at the third floor would have to be removed and the floor extended deeper towards the rear of the lot, enclosing a portion of what is not the third floor terrace and the remainder of the terrace would have to be removed. The applicant represents that this process would involve lengthy and costly construction which would result in substantial changes and a modification of building envelope and creates a practical difficulty.

Accordingly, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

Over the course of hearings, the Board questioned whether the proposed alteration could be regarded as a legally existing non-complying structure, as per Z.R. § 54-31, because the building was originally developed as a residence. In response, the applicant articulated four circumstances in which a building could be altered and maintain a non-complying window condition as of right: (1) if the building contained a non-conforming use, which, as of December 15, 1961, it did not; (2) if the windows are an existing non-complying condition which, according to Sanborn maps, they are not; (3) if the Premises were converted prior to 1961, which it was not; and, (4) if the two circumstances described in Z.R. § 23-861 apply (a building with a maximum height of 32 feet and maximum of three units or with three stories if the lowest story is either a base or is excluded from floor area by definition), and since the proposed building is a four-story with cellar, 48-foot tall building, they do not. Additionally, the applicant decreased the sizes of the windows in the rear in response to Board concerns about the size of the window openings.

The finding of economic hardship as articulated in Z.R. § 72-21 (b) is not required for a variance involving the alteration of a one-, two- or three-family residence.

The applicant represents that the requested variance will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare because the proposed variance does not seek to enlarge or modify the building envelope. The applicant further represents that the surrounding neighbors are predominantly residential townhouses. The applicant states that the Premises already have a legally existing dwelling unit, and the proposed alteration seeks to expand that use to all other floors, a project which can be done as-of-right in larger buildings.

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

The applicant states the unnecessary hardship

attributed to strict application of the zoning regulations to the subject property was not caused by the owner of the Premises nor a predecessor in interest but is inherent in the site. The applicant represents that it is adversely affected by the zoning's bulk regulations as applied to the existing mixed-use building, which was designed prior to modern zoning. The applicant further states that the building design did not take into account the possibilities of the space being used for future residential use, and altering the subject property to comply with existing zoning regulation would require considerable and extensive work which presents a practical difficulty.

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

The applicant notes that the extent of the variance requested is no greater than necessary to provide reasonable relief because it will enable the applicant to convert the existing building without substantial structure work.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

By letter dated June 29, 2020, the Fire Department states that the Bureau of Fire Prevention inspected the Premises and found that the Premises are fully protected and that sprinkler coverage at the rear walls is sufficient based on design practices; sprinkler heads are located less than five feet from the rear walls and would provide sufficient water coverage to prevent the spread of fire to the exterior of these Premises. Based upon the foregoing, the Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

By Certificate of Appropriateness, COFA-19-35847, the New York City Landmarks Commission permitted enlargement of the rear windows at the first and second floors, which proposal was initially the subject of this application. During the course of the hearings before the Board, however, the application was amended to retain the existing window conditions at the first and second floors, hence there is no longer any proposal to modify the rear façade or existing windows.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA064M, dated July 27, 2020.

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 *issue* a Type II determination under 6 NYCRR Part 617.5 and makes each and every one of the required findings under Z.R. § 72-21 to *legalize*, on a site located within a C1-4 (R7-2) zoning district and in the Mount Morris Park Historic District, the conversion and legalization of an existing four-story, plus cellar, mixed-use semi-detached building to a UG 2 single-family residence, contrary to Z.R. § 23-861, on condition that all work and

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site conditions shall conform to drawings filed with this application marked "Received June 11, 2020"- Twelve (12) sheets; and *on further condition:*

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 6,695 square feet (2.69 FAR); rear yard with a depth of 11'-9" at the first and second floor, and 21'-10" at the third and fourth floors; a total existing height of 48'-0" to the roof substrate and 57'-2" to the top of the roof peak, and no parking spaces, as per the BSA-approved plans;

THAT there shall be no habitable room in the cellar;

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 27, 2020.

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## 2019-158-BZ

### CEQR #19-BSA-136Q

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 57<sup>th</sup> Avenue, Block 1845, Lot 41, Borough of Queens.

### COMMUNITY BOARD #4Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 22, 2019, acting on Alteration Type I Application No. 421885678, reads in pertinent part:

"Proposed reinstatement of existing Use Group 6 eating and drinking establishment with accessory drive thru, in a R6/C1-2 zoning district, requires special permit pursuant to zoning resolution section 73-243."

This is an application under Z.R. §§ 73-243 and 73-03 to permit, in a C1-2 (R6) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. § 32-10.

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 December 10, 2019, February 11, 2020, March 24, 2020, and June 30, 2020, and then to decision on July 27, 2020. Vice-Chair Chanda and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 4, Queens, recommends approval of this application.

The Premises are located on the northeast corner of 57th Avenue and Queens Boulevard, in a C1-2 (R6) zoning district, in Queens. With approximately 195 feet of frontage along 57th Avenue, 81 feet of frontage along Queens Boulevard, and 20,119 square feet of lot area, the Premises are occupied by a one-story eating and drinking establishment (approximately 2,287 square feet of floor area), operated as "White Castle," with accessory drive-through.

The Board has exercised jurisdiction over the Premises since July 23, 1996, when under BSA Cal. No. 118-95-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-243 and 73-03, to permit, in a C1-2 (R6) zoning district, the addition of a drive-thru facility to an eating and drinking establishment on condition that all work conform to drawings filed with the application; fencing and landscaping be provided and maintained in accordance with BSA approved plans; the term of the special permit be five years, to expire on July 25, 2001; a "right hand turn only" sign be provided and maintained on 57th Avenue; 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 law under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 73-70.

On December 11, 2001, under BSA Cal. No. 118-95-BZ, the Board amended the resolution to extend the term for five years, to expire on July 25, 2006, on condition that 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 certificate of occupancy be obtained within 18 months, by June 11, 2003.

On May 22, 2007, under BSA Cal. No. 118-95-BZ, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the time to obtain a certificate of occupancy for one year, by May 22, 2008, and to extend the term for five years, to expire on July 25, 2011, on condition that any and all work substantially conform to drawings as they apply to the objections and the drawings filed with the application; the conditions be set forth in the certificate of occupancy; there be no change in the operator of the subject eating and drinking establishment without prior approval of the Board; 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 the specifically cited and filed DOB/other jurisdiction objection(s) only; the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, the Administrative Code, and any



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other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On November 15, 2011, under BSA Cal. No. 118-95-BZ, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the time to obtain a certificate of occupancy, to expire on November 15, 2012, and to extend the term for five years, to expire on July 25, 2016, on condition that any and all work substantially conform to drawings as they apply to the objections filed with the application; all signage on the site comply with C1 district regulations; the conditions be set forth in the certificate of occupancy; there be no change in the operator of the subject eating and drinking establishment without prior approval of the Board; 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; the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The Board notes that in addition to the foregoing, its determination is also subject to and guided by Z.R. § 73-03. Furthermore, the Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

As a threshold matter, the Board notes that this site is within the boundaries of a designated area in which the subject special permit is available.

The applicant states that the eating and drinking establishment is designed for safe maneuvering and that the drive-through lane provides space for the queueing of a minimum of ten vehicles without interfering with parking. Accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than ten automobiles.

The applicant represents that the subject site layout of the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity. Specifically, the drive-through provides curb cuts on Queens Boulevard and 57th Avenue and the right turn only onto Queens Boulevard and the right turn only onto 57th Avenue, ensure that the drive-thru facility will cause minimum interference with traffic flow in the immediate vicinity. Accordingly, the Board finds that the subject drive-through facility will cause minimal interference with traffic flow in the immediate

vicinity.

The applicant represents that the eating or drinking establishment with an accessory drive-through facility fully complies with the accessory off-street parking regulations for the C1-2 zoning district where the Premises is located. Specifically, the applicant states that, pursuant to ZR Section 36-21, the minimum required number of parking spaces is 7; the Premises proposes 23 parking spaces. Accordingly, the Board finds that the subject eating or drinking place with accessory drive-through facility fully complies with the accessory off-street parking regulations for a C1-2 (R6) zoning district, including provision of the required number of accessory off-street parking spaces.

The applicant represents that the character of the commercially zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle. Specifically, the applicant states that the Premises is located on a heavily trafficked intersection and are surrounded by commercial uses, including approximately three gasoline service stations within one mile and other eating and drinking establishments with drive-thru facilities. Accordingly, the Board finds that the character of the commercially zoned street frontage within 500 feet of the subject site reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing commercial uses contained within such area and to the subject eating or drinking place (excluding the accessory drive-through facility portion).

The applicant represents that the plans include a lighting plan, which shows lighting will not impose a negative impact to residential neighbors in the rear of the Premises. Further, the applicant states that there will be adequate buffering between the drive-through facility and adjacent residential uses. Over the course of the hearings, the Board raised concerns that the noise, lighting, and trash from the Premises create nuisances for the residential neighbors. First, since the drive-through is open 24 hours a day, seven days a week, the noise emanating from the menu board and the establishment's customers may disturb the nearby residential neighbors. Second, the Premises has tall lighting poles at the residential property line. Third, the trash is collected and stored close the residential property line. Finally, the landscaping contained dead plants which lessened the density of the buffer zone between the subject establishment and adjacent residential properties. In response, the applicant submitted an operational plan addressing these issues. The operational plan commits to the following: the drive-through speaker was moved into the ordering housing and the volume was adjusted so that the sound does not travel beyond the vehicle; the lighting pole at the residential lot line was lowered to 15 feet above grade and a light shield was installed; the trash is kept in concrete trash enclosures with doors and the frequency of the trash and recycling pickup increased to three times a week. The applicant also submitted new landscaping plans to include dense buffering with live plants.

Accordingly, the Board finds that the subject drive-

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through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject site and finds that there will be adequate buffering between the drive-through facility and adjacent residential uses. Further, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA136Q, dated July 27, 2020.

In light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-243 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-243 and 73-03 to *permit*, in a C1-2 (R6) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. § 32-10; *on condition* that all work, its conditions and operations shall conform to drawings filed with this application marked "Received July 9, 2020"-Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five years, expiring July 27, 2025;

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

THAT there shall be no change in the operator of the subject eating and drinking establishment without prior approval of the Board;

THAT dense landscaping shall be maintained with living plants;

THAT the menu board speakers shall be maintained at levels that are inaudible beyond the property line;

THAT the lumens level shall be zero ("0.00") at the property line;

THAT management must place multiple signs throughout the parking lot which state "Turn radio off";

THAT management must ensure that no loud music is played by patrons waiting in the drive-thru between 7 p.m. and 7 a.m.;

THAT dumpsters must be kept within the dumpster enclosure at all times;

THAT the trash pickup must occur three times a week, on Sunday, Tuesday, and Thursday, as per the applicant's operational plan;

THAT recycling pickup must occur three times a week, on Sunday, Monday, and Wednesday, as per the applicant's operational plan;

THAT management must ensure routine rodent and

pest control to be implemented;

THAT the site must be kept free of debris and graffiti at all times;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-158-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 May 18, 2022;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department.

Adopted by the Board of Standards and Appeals, July 27, 2020.

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## 2019-202-BZ

### CEQR #20-BSA-014K

APPLICANT – Eric Palatnik, P.C., for Jack Aini, owner.  
SUBJECT – Application August 7, 2019 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 Special Ocean Parkway District.

PREMISES AFFECTED – 2218 East 3<sup>rd</sup> Street, Block 7129, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated July 8, 2019, acting on Alteration Type I Application No. 321387879, reads in pertinent part:

1. ZR 23-142: Proposed Lot coverage/Open Space is contrary to ZR 23-142
2. ZR 23-461(a), ZR 113-543 & ZR 54-313(b): Proposed one-story vertical enlargement of the existing building with an existing non-complying minimum side yard (3'-7") is contrary to ZR 23-461(a), ZR 113-543, and ZR 54-313(b)
3. ZR 23-461(a), ZR 113-543: Proposed three-story horizontal enlargement of the existing with an existing non-complying minimum side yard (3'-7") is contrary to ZR 23-461(a)

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and ZR 113-543

4. ZR 23-461(a), ZR 113-543: Proposed two-story and three-story horizontal enlargements of the existing building with a proposed non-complying total width of side yards (11'-7") is contrary to ZR 23-461(a), ZR 113-543."

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district and in the Special Ocean Parkway District, the enlargement of an existing single-family, two-story residence that does not comply with zoning regulations for open space, lot coverage, and side yards, contrary to Z.R. §§ 23-142 and 23-461(c).

A public hearing was held on this application on April 21, 2020 after due notice by publication in *The City Record*, and then to decision on July 27, 2020. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 3rd Street, between Avenue U and Avenue V, within an R4 zoning district and the Special Ocean Parkway District, in Brooklyn. With approximately 40 feet of frontage along East 3rd Street, 100 feet of depth, and 3,987 square feet of lot area, the Premises are occupied by an existing two-story with cellar, single-family residence.

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

The existing single-family residence is a two-story with cellar single-family residence with a 2,854 square feet of floor area, a lot coverage of 37% and open space of 63%, two side yards with widths of 7'-8" and 3'-7". The applicant requests an enlargement to the residence's floor area by adding an additional floor and increasing southern side yard. The proposed building will have a floor area of 4,977 square feet, 1.24 FAR, a lot coverage of 50%, 50% of open space, two side yards measuring 7'-8" and 3'-7", a rear yard with a depth of 20'-0", a front yard measuring 8'-10" and a total height of 35'-0". The applicant represents that there has been no change in the existing non-complaint condition at the first story and is not seeking a waiver for the non-complaint front yard as it is permitted pursuant to ZR § 54-31.

At the Premises, a maximum of 1.50 FAR (5,980.50 square feet of floor area) is permitted, two side yards with minimum widths of five feet, with ten feet of total side yard, are required, a maximum lot coverage of 45% is permitted, and a minimum of 55% of open space is required, pursuant to Z.R. §§ 23-142, 23-143, and 23-461(c).

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that, of the 78

qualifying residences, 33 of those residences (42 percent) have a lot coverage of 53 percent or greater. The applicant submitted a side yard study demonstrating that, on the subject block, 27 interior lots (37.5 percent) have least one side yard measuring zero feet. The applicant provided photographs of the streetscape near the residence and represents that the as-built condition will be in context with the social block. The proposed enlargement includes an extension of the existing non-complying southern side yard, and, pursuant to a 1950 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and are legal non-compliances.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA014K, dated July 27, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story single-family residence that does not comply with zoning regulations for lot coverage yards contrary to Z.R. §§ 23-141, 23-461(a), and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "July 15, 2020"- nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum lot coverage of 50%, a minimum open space of 50%, and the southern side yard with a width of 3'-7", 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

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certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-202-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 April 29, 2025;

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

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

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

Adopted by the Board of Standards and Appeals, July 27, 2020.

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## 2019-266-BZ

APPLICANT – Law Office of Steven Simicich, for 1492 & 1498 Clove Road, LLC, owner.

SUBJECT – Application September 18, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3X LDGMA zoning district.

PREMISES AFFECTED – 1498 Clove Road, Block 661, Lot 19, Borough of State Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 3, 2019, acting on New Building Application No. 520369066, reads in pertinent part:

“Enlargement of existing ambulatory diagnostic or treatment health care facility exceeds the 1,500 square foot limitation of ZR 22-14, apply to BSA for special permit ZR 73-126.”

This is an application for a special permit, pursuant to Z.R. § 73-126, to permit the enlargement of an ambulatory diagnostic or treatment care facility, located within a lower density growth management area, contrary to Z.R. § 22-14.

A public hearing was held on this application on May 18, 2020, after due notice by publication in *The City Record*. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 1, Staten Island, recommends approval of this application. The Board also received one form letter

in support and one form letter in objection to this application.

The Premises are located on the west side of Clove Road, between Howard Avenue and Little Clove Road, within an R3X zoning district and in the Lower Density Growth Management Area, on Staten Island. With approximately 105 feet of frontage along Clove Road, between 110 and 121 feet of depth, and 12,095 square feet of lot area, the Premises are occupied by an existing two-story two-family residence that will be altered to allow for an as of right development of ambulatory diagnostic community facility space on the first floor and residential/one dwelling unit on a portion of the first floor and entire second floor, cellar storage space, and 15 parking spaces.

By letter, dated June 15, 2020, the applicant states that the owner seeks to develop the property as of right and no longer requests a special permit. Accordingly, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, July 27, 2020.

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## 2020-6-BZ

### CEQR #20-BSA-057M

APPLICANT – Law Office of Jay Goldstein, PLLC, owner.

SUBJECT – Application January 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Strengthen Lengthen Tone*) to be located on portions of the first, third and fourth floors of an existing 13-story commercial building contrary to ZR 32-10. C5-2 zoning district.

PREMISES AFFECTED – 88 Madison Avenue, Block 00858, Lot 0017, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 13, 2019, acting on DOB Alteration Type I Application No. 102921527, reads in pertinent part:

“The proposed physical culture establishment is not permitted, as-of-right, in a C5-2 Zoning District. A special permit, pursuant to ZR 73-36, is required from the Board of Standards and Appeals, as defined by ZR 12-10, is contrary to ZR 32-10.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C5-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first, third and fourth floors of an existing 13-story hotel and commercial building, contrary to Z.R.

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# MINUTES

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§ 32-10.

A public hearing was held on this application on June 30, 2020, after due notice by publication in *The City Record*, and then to decision on July 27, 2020. Community Board 5, Manhattan, waived its recommendation of this application.

The Premises are located on the west side of Madison Avenue between East 28th Street and East 29th Street, within a C5-2 zoning district, in Manhattan. With approximately 123 feet of frontage along Madison Avenue, 50 feet of frontage along East 28th Street, and 145 feet of frontage along East 29th Street, the Premises are occupied by an existing 13-story hotel and commercial building designated by the Landmarks Preservation Commission (“LPC”) as an individual landmark, known as the James NoMad Hotel.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 3,359 square feet of floor area on portions of the first, third and fourth floors as follows: 169 square feet on the first floor with the PCE lobby; 2,672 square feet on the third floor with the exercise studio, changing rooms, showers, and restrooms; and 518 square feet on the fourth floor with reception and retail space. The PCE began operation in January 2020, as “SLT,” with the following hours of operation: 5:00 a.m. to 10:00 p.m., weekdays, and 8:00 a.m. to 8:00 p.m., weekends.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located inside a commercial building, with ground floor eating and drinking use and hotel use above. The surrounding area is comprised of residential, commercial, community facility, and mixed commercial/residential uses. The PCE does not attract significant additional traffic to the area and therefore does not have a negative impact on the adjacent tenants or the neighborhood. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics. The Board finds that the subject PCE use is consistent with

those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE is located within a commercial building, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include partitions at the studio isolated by two layers of 5/8" sheetrock inside the studio and two layers outside the studio, with sound attenuating sealant, and 3.5" sound attenuated insulation with resilient isolating wall clips; all studio flooring consists of four layers of plywood with neoprene 2" mount isolators above the slab with insulation; all penetrations at the studio ceilings and partitions are sealed with mineral fiber insulation and caulked. Acoustic seals are placed on the studio door, which has an STC rating of 40; 7'-10" by 3'-10" hanging acoustic panels protect the studio ceilings; the walls have an STC rating of 60, and the floor has an STC rating of 66. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and the PCE will produce no negative impact to the surrounding area.

The applicant states that a sprinkler system, and a fire alarm system with connection to a central monitoring station, will be maintained within the PCE space. By correspondence dated June 26, 2020, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) that was tested and witnessed by the Bureau of Fire Prevention on April 25, 2017, and tested satisfactory to the Fire Departments rules and regulations. The Premises are also protected by a fire alarm system that was also tested to the satisfaction of the Fire Department. 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. Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

By Certificate of No Effect (“CNE”) CNE-20-00074, issued July 15, 2019, LPC approved work consisting of interior alterations at the first, third, and fourth floors, including the demolition of nonbearing partitions and finishes, as well as electrical, mechanical, and plumbing work.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-057M, dated January 9, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of

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# MINUTES

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discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C5-2 zoning district, the operation of a physical culture establishment on portions of the first, third and fourth floorsportions of the first, third and fourth floors of an existing 13-story hotel and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received January 16, 2020”- Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring July 27, 2030;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-6-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 March 1, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, July 27, 2020.

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## 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

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 24-25, 2020, at 10 A.M., for decision, hearing closed.

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## 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 28<sup>th</sup> Street, Block 8791, Lot 120, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M., for adjourned hearing.

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## 2019-196-BZ

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

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

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

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020 at 10 A.M., for adjourned hearing.

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# MINUTES

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**2019-263-BZ**

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Richmond.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020 at 10 A.M., for adjourned hearing.

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**2019-296-BZ**

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

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

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

**COMMUNITY BOARD #1M**

**ACTION OF THE BOARD** – Laid over to September 14-15, 2020, at 10 A.M., for deferred decision.

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
JULY 27-28, 2020, 1:00 P.M.**

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

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**ZONING CALENDAR****2019-292-BZ**

APPLICANT – The Law Office of Vincent L. Petraro, PLLC., for Epic Tower LLC, owner.

SUBJECT – Application November 8, 2019 – 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.

PREMISES AFFECTED – 41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M., for continued hearing.

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**2019-298-BZ**

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

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

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

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, Nos. 32-33

August 21, 2020

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SHAMPA CHANDA, *Vice-Chair*

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**2020-62-BZ (**

90 West 225th Street, Block 2215, Lot(s) 7502, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (Planet Fitness) on portions of the first and second floors of an existing building contrary to 32-10. C8-3 zoning district. C8-3 district.  
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**2020-63-BZ**

1718 East 28th Street, Block 6810, Lot(s) 0012, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing one-family home contrary to underlying bulk requirements. R3-2 zoning district. R3-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**OCTOBER 5-6, 2020, 10:00 A.M. & 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, October 5, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday October 6, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.  
SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

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

**COMMUNITY BOARD #2SI**

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### 141-66-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application May 13, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010; Extension of Time to Obtain a Certificate of Occupancy. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9<sup>th</sup> Street, Block 450, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### 313-77-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Gilsey House, Inc., owner.

SUBJECT – Application February 21, 2020 – 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. M1-6 zoning district. Gilsey House Individual Landmark.

PREMISES AFFECTED – 1200 Broadway and 17-27 West 29<sup>th</sup> Street, Block 831, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152<sup>nd</sup> Street, Block 4531, Lot 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### 303-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation (Lots 7&8), owner; SoBro Development Corporation (Lot 6), lessee.

SUBJECT – Application March 6, 2020 – Amendment of a previously approved Variance (§72-21) to allow a new mixed-use building consisting of residential units and community facility space. The Amendment seeks additional dwelling units.; Extension of Time to Complete Construction which expired on December 15, 2019; Waiver of the Board's Rules of Practice and Procedure. R6 & C1-4 zoning districts.

PREMISES AFFECTED – 506-510 Brook Avenue, Block 2274, Lot(s) 6, 7, 8, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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## APPEALS CALENDAR

### 2020-46-A

APPLICANT – Deirdre A. Carson, Esq., for 1248 Associates LLC (c/o Hidrock Properties), owner.

SUBJECT – Application May 26, 2020 – Extension of Time to Complete Construction of a new building on the site as a new temporary certificate of occupancy for the entire building may not be obtained by January 31, 2021.

PREMISES AFFECTED – 12-14 East 48<sup>th</sup> Street, Block 1283, Lot 11, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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# CALENDAR

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## ZONING CALENDAR

### **2020-18-BZ**

APPLICANT – Eric Palatnik, P.C., for Albert Hasson,  
owner

SUBJECT – Application February 21, 2020 – Special  
Permit (§73-622) to permit the enlargement of an existing  
single-family home contrary to ZR §23-142 (floor area).  
R3-1 zoning district.

PREMISES AFFECTED – 920 Shore Boulevard, Block  
8746, Lot 107, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Margery Perlmutter, Chair/Commissioner*

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
AUGUST 10-11, 2020, 10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**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. REMISES AFFECTED – 210 East 86<sup>th</sup> Street, Block 1531, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

**THE VOTE** –

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

Negative:.....0

**THE RESOLUTION** –

This is an application for an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the enlargement and use of the theater section of an existing building, and expired on December 17, 2016.

A public hearing was held on this application on March 24, 2020, after due notice by publication in *The City Record*, with continued hearings on June 1, 2020, and July 13, 2020, and then to decision on August 10, 2020. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 8, Manhattan, recommends approval of this application.

The Premises are located on a through-lot with frontage on the south side of East 86<sup>th</sup> Street and the north side of East 85<sup>th</sup> Street, between Third Avenue and Second Avenue, partially within an R6B zoning district and partially within a C2-8A zoning district, in Manhattan. With approximately 75 feet of frontage along each East 86<sup>th</sup> Street and East 85<sup>th</sup> Street, 204 feet of depth, and 15,274 square feet of lot area (7,611.42 square feet within the R8B portion and 7,662.5 square feet within the C2-8A portion), the Premises are occupied by an existing nine-story, with cellar, commercial and community facility building, with a nine-story section fronting on East 86<sup>th</sup> Street and a two-story section fronting on East 85<sup>th</sup> Street, containing a cellar medical office, office use on the upper floors, retail stores

and the theater entrance on the first floor; the two-story section of the Premises includes the subject four-auditorium theater use.

The Board has exercised jurisdiction over the Premises since December 17, 1996, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the enlargement of the theater section of an existing building which has a seven-story office building fronting on East 86<sup>th</sup> Street and a one-story theater section with two motion picture theater auditoriums extending through to East 85<sup>th</sup> Street, by the construction of an intermediate level within the existing theaters and the raising of the roof of the existing theaters to a level just beneath the East 85<sup>th</sup> Street parapet wall, to create two additional motion picture theater auditoriums, for a total of four, which does not conform to the district use regulations, or comply with the regulations limiting structural alterations to buildings substantially occupied by non-conforming uses and enlargements of existing non-conforming uses, contrary to Z.R. §§ 22-10, 52-22, and 52-40, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application marked “Received April 29, 1996”-(9) sheets, “August 28, 1996”-(1) sheet, and “December 10, 1996”-(3) sheets; all trash be stored indoors in accordance with BSA-approved plans until time of pickup; the term of the variance be limited to 20 years, to expire on December 17, 2016; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 72-23.

On April 15, 2003, under BSA Cal. No. 356-02-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the addition of two floors atop the existing seven-story building, 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 be removed within 48 hours; the applicant comply with all applicable fire safety measures; construction be completed in accordance with Z.R. § 72-23; 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/other jurisdiction objection(s) only; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

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

The applicant represents that no physical modifications at the Premises are proposed. The applicant provided utility bills for the theater and photographs of the theater operating to continuously cover the period from the

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# MINUTES

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expiration of term through 2019 and states that, absent an extension of term by the Board, the theater would close and suffer hardship due to the costly conversion of the theater its original condition.

By correspondence dated March 24, 2020, the Fire Department states that the theater establishment has been inspected by the Bureau's Licensed Public Place of Assembly (LPPA) unit and a violation order (E529886) was issued on September 10, 2018, for failure to obtain an operating permit from the Department of Buildings. To date, a Place of Assembly application filed with the Department of Buildings has been approved but no permits issued. The Premises have a fire suppression system (standpipe and sprinkler) and a fire alarm system that has been tested and FDNY permits are current. The Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated December 17, 1996, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to expire on December 17, 2036; *on condition*:

THAT all trash shall be stored indoors in accordance with BSA-approved plans until time of pickup;

THAT the term of the variance shall be for 20 years, to expire on December 17, 2036;

THAT the conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 67-96-BZ") 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 March 10, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, August 10, 2020.

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## **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 22-23, 2021, at 10 A.M., for continued hearing.

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## **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 9, 2020, at 10 A.M. for reopened, continued hearing.

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## **51-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corp., owner.

SUBJECT – Application January 16, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a dance studio (UG 9) and a physical cultural establishment (*Push Fitness Club*) which expired on December 12, 2016; Amendment to permit a change in hours of operation for the PCE; Waiver of the Board's Rules of Practice and Procedure. C1-2R2A zoning district.

PREMISES AFFECTED – 188-02 Union Turnpike, Block 7266, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #8Q**

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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# MINUTES

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## 179-10-BZ

APPLICANT – Akerman LLP, for E & R Duffield Associates, owner.

SUBJECT – Application January 17, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness on the cellar, first and second floors of a two-story commercial building which expired on January 1, 2020. C6-4.5 Special Downtown Brooklyn District.

PREMISES AFFECTED – 249 Duffield Street, Block 146, Lot 2, 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 September 14, 2020, at 10 A.M., for decision, hearing closed.

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## 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 21<sup>st</sup> Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 30, 2020, at 10 A.M., for continued hearing.

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## 64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern and Goldie Stern, for 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 23<sup>rd</sup> Street, Block 7658, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 30, 2020, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 58-13-A

APPLICANT – Law Office of Jay Goldstein, for Sylvaton Holdings LLC, owner.

SUBJECT – Application December 23, 2019 – Amendment of a previously approved application permitting the development of a 3-story residential building located within the bed of a mapped street contrary to General City Law §35. R4 and M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place (28, 32 & 35 Sylvaton Terrace), Block 2827, Lot(s) 200, 203, 205, 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 October 5, 2020, at 10 A.M., for decision, hearing closed.

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### 2018-30-A

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to November 30, 2020, at 10 A.M., for continued hearing.

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### 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 November 9, 2020, at 10 A.M., for continued hearing.

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# MINUTES

## 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 October 5, 2020, at 10 A.M., for continued hearing.

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## 2019-68-A

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

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

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

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to October 19, 2020, at 10 A.M., for adjourned hearing.

-----

## 2019-195-A

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

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

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

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to October 19, 2020, at 10 A.M., for adjourned hearing.

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## ZONING CALENDAR

## 2018-67-BZ

### CEQR #18-BSA-135K

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** – Application granted.

## THE VOTE –

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

Negative:.....0

## THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 10, 2018, acting on Alteration Type I Application No. 321783682, reads in pertinent part:

“The proposed enlargement exceeds the permitted Floor Area Ratio permissible pursuant to Z.R. Section 33-121. A special permit is available through the Board of Standards and Appeals pursuant to Z.R. Section 73-621 which addresses the proposed Floor Area Ratio non-compliance.”

This is an application under Z.R. §§ 73-621 and 73-03 to permit, within a C1-3 (R6B) zoning district in the Special Bay Ridge District, the legalization of a one-story horizontal enlargement at the rear of an existing building containing residential uses that does not comply with zoning regulations for floor area, contrary to Z.R. § 33-121.

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 March 24, 2020, and June 15, 2020, and then to decision on August 10, 2020. Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 10, Brooklyn, recommends approval of this application. The Board also received one letter objecting to this application that cites concerns over the loss of natural light and fresh air to the adjacent properties.

The Premises are located on the west side of Fifth Avenue, between 74th Street and Bay Ridge Parkway, within a C1-3 (R6B) zoning district in the Special Bay Ridge District, in Brooklyn. With approximately 20 feet of frontage along Fifth Avenue, 102 feet of depth, and 1,983 square feet of lot area, the Premises are occupied by an existing three-story, with cellar, building, with commercial retail use on the first floor, residential on the second and third floors, and accessory uses in the cellar.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that the subject application seeks to enlarge an existing semi-detached mixed-used commercial and residential building that existed on December 15, 1961, as contemplated in Z.R. § 73-621.

The applicant requests a legalization of the existing one-story horizontal enlargement in the rear of the building. The existing building is a three-story, with cellar, semi-detached building with a floor area of 4,174.90 square feet (2.11 FAR). The applicant represents that the enlargement is an addition to the existing first floor which contains part of the existing pharmacy area and a bathroom.



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# MINUTES

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At the Premises, the maximum FAR permitted is 2.00, *see* Z.R. § 33-121, so the proposed FAR does not exceed 110 percent of the maximum allowed.

The applicant represents that the enlargement is consistent with the built character of the neighborhood because the condition has existed at the building since at least the 1980s before the current owners purchased the property and is a modest addition to the total square footage. The applicant further represents that the buildings in the area that front on Fifth Avenue mixed-used and commercial buildings ranging from one to four stories.

By letter dated July 14, 2019, the Fire Department states that a site inspection was performed by members of the Fire Department and raised the following objections: egress at the rear of the second and third floor (residential use) has been compromised, in that tenants of these two floors would not be able to evacuate the building from the rear in the event of any emergencies; and, the use of the first floor is being used as a massage parlor and there were no licensed massage therapist on duty at the time of the inspection. The Fire Department recommends that a residential sprinkler system be installed in the stairwell, from the first to the third floors; plans be revised to show the massage rooms constructed at the first floor and an application filed with the Board of Standards and Appeals for a special permit for a physical culture establishment (massage therapist). Once an application for a residential sprinkler system, revised plans of the first floor and an application for a special permit have been filed, the Department will review and determine compliance with its objection.

In response, the applicant submitted the following: revised plans which note that all existing interior partitions on the first floor will be removed; approved sprinkler plans for the entire building filed with the Department of Buildings; and, an executed tenant surrender agreement with supporting photographs demonstrating that the massage parlor located on the first floor of the building had been vacated.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA135K, dated August 10, 2020.

The Board finds that the evidence in the record

supports the findings required to be made under Z.R. §§ 73-621 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved,* that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-621 and 73-03 to *permit* the legalization of a one-story enlargement at the rear of an existing semi-detached three-story with cellar mixed-use commercial and residential building that does not comply with zoning regulations for FAR, contrary to Z.R. § 33-121; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “July 22, 2020”- six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 4,175 square feet of floor area (2.11 FAR);

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-67-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 May 18, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, August 10, 2020.

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## **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 14<sup>th</sup> Avenue (1372-1384 62<sup>nd</sup> St., 1370 62<sup>nd</sup> St, 6210 14<sup>th</sup> Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to October 19, 2020, at 10 A.M., for adjourned hearing.

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**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 December 14, 2020, at 10 A.M., for continued hearing.

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**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**

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 14, 2020, at 10 A.M., for decision, hearing closed.

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**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 October 19, 2020, at 10 A.M., for adjourned hearing.

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**2019-24-BZ**

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to December 14, 2020, at 10 A.M., for continued hearing.

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**2019-25-BZ**

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

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to November 9, 2020, at 10 A.M., for continued hearing.

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**2019-35-BZ**

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

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

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

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to October 19, 2020, at 10 A.M., for adjourned hearing.

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
AUGUST 10-11, 2020, 2:00 P.M.**

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

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**ZONING CALENDAR**

**2018-124-BZ**

APPLICANT – Law Office of Jay Goldstein PLLC, for  
Beacway Operating LLC, owner; Flywheel sports, lessee.  
SUBJECT – Application July 26, 2020 – Special Permit  
 (§73-36) to permit the operation of a Physical Cultural  
 Establishment (*Flywheel Sports*) to be in a portion of the  
 cellar of an existing building Contrary to ZR §32-10. C4-  
 6A Special Enhanced Commercial District, NYC  
 Designated Interior Landmark Building.

PREMISES AFFECTED – 2130 Broadway aka 304-314  
 Amsterdam Avenue, 2124-2134 Broadway, 200-216 West  
 75<sup>th</sup> Street, Block 1166, Lot(s) 35, 135, Borough of  
 Manhattan.

**COMMUNITY BOARD #7M**

**ACTION OF THE BOARD** – Laid over to October  
 19-20, 2020, at 10 A.M., for postponed hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, No. 34

September 4, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

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*Commissioners*

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2020-5-BZ	21-10 44 <sup>th</sup> Drive, Queens

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# DOCKETS

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New Case Filed Up to August 24-25, 2020  
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**2020-62-BZ**

90 West 225th Street, Block 2215, Lot(s) 7502, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (Planet Fitness) on portions of the first and second floors of an existing building contrary to 32-10. C8-3 zoning district. C8-3 district.  
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**2020-63-BZ**

1718 East 28th Street, Block 6810, Lot(s) 0012, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing one-family home contrary to underlying bulk requirements. R3-2 zoning district. R3-2 district.  
-----

**2020-64-BZ**

85-94 66th Road, Block 3144, Lot(s) 0042, Borough of **Queens, Community Board: 6**. Variance (§72-21) to permit the development of a three-story plus cellar House of Worship (UG 4) with an accessory rabbi's apartment contrary to ZR §24-11 (lot coverage), ZR §24-34 (front yard), ZR §24-35 (side yards), and ZR §24-36 (rear yard). R4 zoning district. R4 district.  
-----

**2020-65-BZ**

1215-1217 East 22nd Street, Block 7622, Lot(s) 24, 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district. R2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**OCTOBER 19-20, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, October 19, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday October 20, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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**SPECIAL ORDER CALENDAR**

### **125-97-BZ**

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

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

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

**COMMUNITY BOARD #6Q**

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## APPEALS CALENDAR

### **2019-276-A**

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

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

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

**COMMUNITY BOARD #11Q**

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## ZONING CALENDAR

### **2018-124-BZ**

APPLICANT – Law Office of Jay Goldstein PLLC, for Beacway Operating LLC, owner; Flywheel sports, lessee.

SUBJECT – Application July 26, 2020 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Flywheel Sports*) to be in a portion of the cellar of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District, NYC Designated Interior Landmark Building.

PREMISES AFFECTED – 2130 Broadway aka 304-314 Amsterdam Avenue, 2124-2134 Broadway, 200-216 W75

Street, Block 1166, Lot(s) 35, 135, Borough of Manhattan.  
**COMMUNITY BOARD #7M**

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### **2019-225-BZ thru 2019-253-BZ**

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

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

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

**COMMUNITY BOARD #3SI**

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### **2020-13-BZ**

APPLICANT – Law Office of Jay Goldstein, for 71 Smith Street Property Owner, LLC; Giles Endurance, LLC d/b/a F45, lessee.

SUBJECT – Application January 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-1 zoning district.

PREMISES AFFECTED – 71 Smith Street (140 Schermerhorn Street, 263-265 State Street), Block 170, Lot 7501, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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### **2020-20-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Young Golf LLC (d/b/a SSWING) owner.

SUBJECT – Application March 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (SSWING) to be located on a portion of the first floor of an existing 45-story commercial building contrary to ZR §32-10. C5-3 (MID) zoning district.

PREMISES AFFECTED – 245 Park Avenue, Block 1301, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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### **2020-31-BZ**

APPLICANT – Akerman LLP, for John Hancock Life Insurance Co., owner.

SUBJECT – Application April 7, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Orangetheory Fitness*) to be located on a portion of the first floor of an existing building contrary to ZR §32-10. C6-5 Special Lower Manhattan Purpose District.

PREMISES AFFECTED – 100 William Street, Block 68, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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# CALENDAR

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**2020-61-BZ**

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

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

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

**COMMUNITY BOARD #11M**

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*Margery Perlmutter, Chair/Commissioner*



# MINUTES

## REGULAR MEETING MONDAY-TUESDAY MORNING AUGUST 24-25, 2020, 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 55-06-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Nadine Street, LLC, owner.

SUBJECT – Application March 12, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a three-story with cellar, office building (UG 6B), which expired on May 14, 2017; Waiver of the Rules. C1-1/R3-2 (NA-1) zoning district.

PREMISES AFFECTED – 31 Nadine Street, Block 2242, Lot(s) 92, 93, 94, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to complete construction pursuant to a variance and special permit, previously granted by the Board pursuant to Z.R. §§ 72-21 and 73-44, which permitted the construction of a three-story with cellar Use Group (“UG”) 6B office building, and a decrease in required off-street accessory parking spaces, and expired on May 14, 2017.

A public hearing was held on this application on July 27, 2020, after due notice by publication in *The City Record*, and then to decision on August 24, 2020. Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood.

The Premises is located within a C1-1 (R3-2) zoning district, within the Special Natural Area District (NA-1), on Staten Island. The applicant submits that the Premises fronts on Nadine Street, a final mapped street that is unopened and not traveled, and has a lot area of 17,718 square feet.

The Board has exercised jurisdiction over the Premises since May 14, 1991, when, under BSA Cal. No. 859-89-BZ, the Board granted a special permit, pursuant to Z.R. § 73-44, to permit a reduction in the number of required off-street parking spaces accessory to a proposed two-story and cellar office building on condition that all work substantially conform to plans as they apply to the objection, filed with the application; no certificate of occupancy thereafter be issued if the use is changed to a use listed in parking

category B unless additional accessory off-street parking spaces to meet such requirements are provided on the site or within the permitted off-site radius; the special permit be limited to a term of 15 years; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 73-70. On March 14, 1994, under BSA Cal. No. 859-89-BZ, the Board amended the resolution to extend the time to complete construction to April 14, 1996.

On January 23, 2007, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, within a the construction of a three-story with cellar, 15,995 square foot, Use Group 6B office building that does not comply with zoning requirements concerning rear yard, wall height, and maximum number of stories, contrary to Z.R. §§ 33-26, 33-23 and 33-431, and a special permit, pursuant to Z.R. §§ 73-44 and 73-30, to permit a decrease in required off-street accessory parking spaces, contrary to Z.R. § 36-21, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the only permitted uses within the building be UG 6B professional offices; a total of 40 accessory parking spaces be provided; the conditions be listed on the certificate of occupancy; the parameters of the proposed building be as follows: a total and commercial floor area of 15,955 square feet, a total and commercial FAR of 0.90, a lot coverage of 29 percent, a total height of 34 feet, three stories and a cellar, a front yard of 15 feet, and no rear yard; the parking layout be as reviewed and approved by the Department of Buildings; the internal floor layouts on each floor of the proposed building be as reviewed and approved by DOB; all landscaping and fencing be installed and maintained as indicated on the BSA-approved plans; prior to the issuance of any building permit, authorization for proposed tree removal will be obtained from the City Planning Commission; the approval be limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

On May 14, 2013, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the time to complete construction, for a period of four years, on condition that all work substantially conform to BSA-approved plans; substantial construction be completed by May 14, 2017; all condition 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

# MINUTES

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

The time to complete substantial construction having expired, the applicant now seeks an extension. Because this application was filed less 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.

The applicant represents that, after the Board's variance grant and extension, unforeseen delays have resulted from ownership changes and financing issues associated with the development at the Premises and states that there are no changes to zoning, the underlying findings of Z.R. § 72-21, and that the applicant maintains current approvals for the builders pavement plan and from the Fire Department, Department of Parks and Recreation, Department of Environmental Protection and City Planning Commission. Specifically, the applicant submits that the unique physical conditions necessitating the variance, including the irregular shape of the lot, inconsistent lot depth, low elevation, its location on an undeveloped street, and subsurface conditions, are still present.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated January 23, 2007, as amended through May 14, 2013, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by March 11, 2025, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received August 5, 2020"- twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total and commercial floor area of 15,955 square feet, a total and commercial FAR of 0.90, a lot coverage of 29 percent, a total height of 34 feet, three stories and a cellar, a front yard of 15 feet, and no rear yard;

THAT the only permitted uses within the building be UG 6B professional offices;

THAT a total of 40 accessory parking spaces be provided;

THAT the parking layout shall be as reviewed and

approved by the Department of Buildings;

THAT the internal floor layouts on each floor of the proposed building be as reviewed and approved by the Department of Buildings;

THAT all landscaping and fencing be installed and maintained as indicated on the BSA-approved plans;

THAT substantial construction shall be completed by March 11, 2025;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 55-06-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 March 11, 2025;

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

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

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

THAT the Department of Buildings must 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 24, 2020.

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## 2017-142-BZ

APPLICANT – Alexander Levkovich, Esq., for George Greene, owner; Iglesia Misioneras De Evangelizacion 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 Evangelizacion 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** – Application dismissed.

THE VOTE –

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

THE RESOLUTION –

This application was filed in May 2017 and is an application for a variance under Z.R. § 72-21 to permit, in an R6 zoning district, the construction of a community-facility building for use as a house of worship that would

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# MINUTES

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not comply with applicable zoning regulations for open space ratio or lot coverage, contrary to Z.R. § 24-11.

A review session was held on this application in April 9, 2019, after due notice by publication in *The City Record*, with an initial public hearing on August 24, 2020, and then to decision on the same date. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

Before hearing, the Board issued a notice of contents on September 27, 2017. Further comments to the Environmental Assessment Statement were then issued on February 13, 2018. The Board then issued a dismissal warning letter on October 1, 2018. On October 23, 2018, the applicant requested an extension of time to respond, which was granted. On December 20, 2018, a final dismissal warning letter was sent to the applicant. On January 4, 2018, the applicant responded; however, further items needed to be completed. On March 21, 2019, a follow-up email was sent to the applicant about the outstanding follow-up items.

At the initial review session, the Board declined to hear this application until a proper determination from the Department of Buildings was obtained.

The applicant then requested more time for the Department of Buildings determination on August 1, 2019, October 6, 2019, and February 3, 2020. On June 2, 2020, the applicant was emailed to follow up on the application.

At the initial hearing, years after this application was filed, the Board discussed the applicant's failure to prosecute this application by obtaining a proper Department of Buildings determination, instead providing continuous requests for extensions. Notwithstanding the foregoing, nothing herein shall be read as prejudicing the applicant in filing a new application when ready to prosecute it.

*Therefore, it is Resolved*, that this application shall be and hereby is *dismissed* for lack of prosecution without prejudice.

Adopted by the Board of Standards and Appeals, August 24, 2020.

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## **58-30-BZ**

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens

### **COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to October 5-6, 2020, at 10 A.M., for continued hearing.

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## **825-86-BZ**

APPLICANT – Akerman, LLP, for Ban Realty LLC, owner.  
SUBJECT – Application July 27, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial banquet hall (UG 9) and eating and drinking establishment (UG 6) contrary to zoning use regulations which expired on June 30, 2017: Amendment to permit the extension of the banquet hall by approximately 1,104 square feet and the addition of two new mezzanines for a total of 2,461 square feet, permit an increase in the maximum permitted occupancy from 850 people to a maximum occupancy of 1,008 people and propose to reduce the parking from 75 to 65 attendant parking spaces; Waiver of the Rules. R5 Zoning District.  
PREMISES AFFECTED – 1703 Bronxdale Avenue, Block 4045, Lot 9, Borough of Bronx.

### **COMMUNITY BOARD # 11BX**

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for continued hearing.

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## **42-97-BZ**

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

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

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

### **COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to October 20-21, 2020, at 10 A.M., for adjourned hearing.

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## **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 – 76-36 164<sup>th</sup> Street, Block 6848, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to October 20-21, 2020, at 10 A.M., for continued hearing.

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# MINUTES

## 27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner; Brooklyn Banya c/o Alona Kruglak, lessee.

SUBJECT – Application December 27, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Banya*) which expired on October 16, 2016; Amendment Waiver of the Rules. C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 602-04 Coney Island Avenue, Block 5361, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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## 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 9, 2020, at 10 A.M., for continued hearing.

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## 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

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 14, 2020, at 10 A.M., for decision, hearing closed.

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## 162-09-BZ

APPLICANT – Akerman LLP, for Steinway 30-33 LLC, owner.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (*Planet Fitness*) on the cellar, first and second floors of a two-story commercial building which expired on December 1, 2018; Waiver of the Board’s Rules of Practice and Procedure.

PREMISES AFFECTED – 30-33 Steinway Street, Block 00680, Lot 0032, Borough of Queens.

### COMMUNITY BOARD #1Q

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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## 126-10-BZ

APPLICANT – Akerman LLP, for Breit Canarsie Owner LLC, owner.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expires on October 26, 2020. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, located on west side of Remsen Avenue between Avenue D and Ditmas Avenue. Block 7920, Lot 5. 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 14, 2020, at 10 A.M., for decision, hearing closed.

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## 193-13-BZ

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

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

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

### COMMUNITY BOARD #12BX

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# MINUTES

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## 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 19-20, 2020, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 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** – Application granted.

## THE VOTE –

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

## THE RESOLUTION –

The decision of the Department of Buildings, dated May 2, 2019, acting on Alteration Type 1 Application No. 421664443, reads in pertinent part:

“Existing building does not satisfy the frontage or mapped street access requirements of Section 36 of the General City Law or Sections 501.3.1 and 502.1 of the NYC Building Code. BSA approval is required.”

This is an application under General City Law § 36 to permit, in an M3-1 zoning district, the construction of a building that does not front on a mapped street.

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 March 25, 2020, and July 14, 2020, and then to decision on August 24, 2020. Vice-Chair Chanda, Commissioner Sheta and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 2, Queens, recommends approval.

The Premises are located within an M3-1 zoning district, in Queens. The applicant submits that the lot fronts on Railroad Avenue, an unmapped street which runs parallel and west of the Long Island Railroad tracks, located between Review Avenue and Newtown Creek. The applicant further submits that this lot is irregularly shaped and has approximately 205 feet of frontage along Railroad Avenue, 140 feet of depth, and 167,746 square feet of lot area.

The applicant requests a legalization of the existing

one-story manufacturing building at the Premises which serves as storage for material. The applicant represents that approximately 35 trucks operate in and out of the Premises daily, and there are 14 parking spaces at the Premises.

In response to Board questions regarding the maneuverability of vehicles at the Premises, the applicant provided maneuverability plans for both personnel vehicles and trucks which states: trucks and cars access solely by the accessway from Railroad Avenue. The trucks drive from Review Avenue down the accessway to the scale. After the trucks are weighed, they enter the Premises to the various stations at the Premises for the asphalt aggregate. When finished, the trucks will drive back to the scale to be weighed and then leave the Premises via the accessway toward Review Avenue. The personnel cars also enter the site through the Review Avenue accessway to the appropriate parking spots. They also leave the site through the Review Avenue Easement.

The Board takes no position on whether the applicant has right of access over the Review Avenue easement right of way and, in order to render its decision, is relying entirely on the applicant’s statements that such right exists. The applicant represented to the Board that it has four easement agreements with surrounding property owners and provided executed agreements to support this representation.

The applicant represented to the Board that all vehicles, including emergency vehicles, access the Premises by the Review Avenue Easement. By letter dated March 26, 2020, the Fire Department states that upon inspection of the Premises, it found that the access roadway provides plenty of room for the fire apparatus access. There are no hydrants on the Premises in question, but three hydrants are available in the immediate vicinity. All three hydrants were tested and are fully operational. Room for fire apparatus access to the building was found to be sufficient on the North Elevation (Exposure 1) and West Elevation (Exposure 4). The East Elevation (Exposure 2) has no room and the South Elevation (Exposure 3) has construction materials stored. Based on the above noted information, the Fire Department has sufficient access to the Premises and has no objection to the application.

By letter dated June 30, 2017, the Department of Environmental Protection (“DEP”) states that, based on the DEP maps, there is a 12” diameter water main in Railroad Avenue at the above referenced location. There are no existing sewers in Railroad Avenue. As per the Department of Finance Tax Map, the Railroad Avenue is a private road on the Lot# 17R. The Applicant must submit a plan showing the proposed method of disposing sanitary, storm discharge, and available water for the proposed development. It is anticipated that the proposed sanitary sewer, storm sewer and water mains that will likely be built in Railroad Avenue, will be maintained by the private owner and not by the New York City. Please submit a copy of the Corporation Council Opinion (CCO) for the unmapped portion of the Railroad Avenue fronting this site. In response, the applicant stated that, at the Premises, a classical sewage disposal system was designed using septic tanks, distribution manhole,

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distribution pools and leaching pools and filed with the Department of Environmental Protection for approval. Stormwater is currently collected, pre-treated and disposed into Newtown Creek under a permit for discharge. Water service is available in Railroad Avenue from a 12" diameter water main, and the site is served with a 2" service from the main.

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 3, 2019, acting on Alteration Type 1 Application No. 421664443, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 25, 2020 "- one (1) sheet; and *on further condition*:

THAT no vehicles shall be parked inside the structure;

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

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

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

THAT all street lighting shall comply with the requirements of the Department of Transportation;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-99-A"), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 17, 2025;

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

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

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

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

Adopted by the Board of Standards and Appeals,

August 24, 2020.

## 2019-295-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tarnoff, for Sutton 58 Holding Company LLC, owner.

SUBJECT – Application November 15, 2019 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58<sup>th</sup> Street, Block 1369, Lot 34, Borough of Manhattan.

## COMMUNITY BOARD #6M

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, under Z.R. § 11-332, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 121191423 (the "New Building Application"), before the effective date of an amendment to the Zoning Resolution.

A public hearing was held on this application on July 28, 2020, after due notice by publication in *The City Record*, and then to decision on August 24, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

### I.

The Premises are located on the south side of East 58th Street, between Sutton Place and First Avenue, in an R10 zoning district, in Manhattan. Comprised of ten tax lots, they have approximately 261 feet of frontage along East 58th Street, 112 feet of frontage along East 57th Street, and 37,501 square feet of lot area. A Confirmatory Declaration of Zoning Lot Restrictions describing these lots as a single zoning lot (the "Zoning Lot") was recorded with the Office of the City Register of the City of New York on February 17, 2017 (Document ID 2017021601077003). The Zoning Lot is occupied by a 16-story residential building on Lot 19, a four-story mixed-use residential community facility building on Lot 22, a six-story residential building on Lot 29, a four-story single-family residence on Lot 129, a five-story multi-family residential building on Lot 30, a six-story multi-family residential building on Lot 31, a six-story multi-family residential building on Lot 33, a five-story multi-family residential building on Lot 36 and a six-story multi-family residential building on Lot 37. The Premises are to be occupied by a 64-story residential building (the "Building").

On April 28, 2017, the Department of Buildings determined that the Building would comply with all applicable zoning regulations and issued building permits

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authorizing work associated with the New Building Application beginning in April 2017 and culminating in the issuance of a new-building permit on October 3, 2017.

By letter dated July 24, 2020, the Department of Buildings represents that building permits associated with the New Building Application were lawfully issued.

Effective November 30, 2017 (the “Effective Date”), the City amended the Zoning Resolution such that modified tower-on-a-base regulations, rather than standard tower regulations, became applicable within R10 zoning districts located in Community District 6 east of First Avenue and north of East 51st Street in Manhattan.

On June 26, 2018, under BSA Calendar Number 2017-320-BZY, the Board renewed building permits for the Building and extended the time to complete the Building’s foundation until December 17, 2018. In so doing, the Board found that, before the Effective Date, the building permits had been lawfully issued, excavation at the Premises had been completed, and substantial progress had been made on the New Building’s foundation.

## II.

Since that time, the building permits have not yet lapsed because judicial proceedings affecting their validity have been instituted, tolling this statutory timeframe until the litigation is resolved. *See* Z.R. § 11-332(d). However, because “a certificate of occupancy including a temporary certificate of occupancy” had not been issued to the Building “within two years after” the Effective Date, the building permits authorizing work associated with the New Building Application could “automatically lapse and the right to continue construction . . . terminate,” ZR § 11-332.

To avoid this result, the applicant seeks to establish the right to continue construction of the Building for two years, under Z.R. § 11-332, and to renew building permits authorizing work associated with the New Building Application. In order to grant this application, the Board must “find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.” Z.R. § 11-332(a).

## A.

First, the applicant has presented evidence that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected “substantial construction” to further development of the Building. Z.R. § 11-332.

In particular, the applicant presented evidence of the completion of excavation, foundation, and a substantial portion of the Building’s superstructure. As of as of November 2017, all support of excavation work (soldier piles and lagging, underpinning piers and tiebacks) was installed; all 55 rock anchors were drilled and assembled; all seven of the footings had been completed; and elevator pit, 10-foot-thick foundation mat slab, and all foundation shear walls had been poured. Since reinstatement of the building permits since July 2018, the owner re-mobilized the construction site and completed the foundation in October

2018.

Further work has been completed to construct the superstructure—including installing rebar, placing and stripping concrete formwork, pouring concrete slabs and foundation columns, and installing scaffolding around the Building with roof protection over adjacent properties. Other significant work includes installing a tower crane and jumping sections of the crane as work progressed. By November 2019, 38 floors of the Building’s superstructure had been completed with both slabs and columns poured.

Together, this progress represents 530 days out of a total 1,253 days projected to complete construction—or 42 percent when measuring construction on a time basis.

Accordingly, the record reflects and the Board finds that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected “substantial construction” to further development of the Building. Z.R. § 11-332.

## B.

Second, the applicant submitted evidence that “substantial expenses” have been paid or incurred as irrevocable financial commitments, totaling approximately \$86.7 million (26 percent) of the total development cost of \$328 million. Accordingly, the record reflects and the Board finds that the owner has incurred “substantial expenses” to further development of the Building. Z.R. § 11-332.

## III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Building, under Z.R. § 11-332, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *grant* this application, under Z.R. § 11-332, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 121191423, before the effective date of an amendment to the Zoning Resolution on November 30, 2017, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for two years, expiring November 18, 2022, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, August 24, 2020.

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## 2020-11-A

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

SUBJECT – Application January 17, 2020 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 301 Park Avenue, Block 1304, Lot(s) 1001-1004, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The determination issued by the Department of Buildings on December 18, 2019, concerning Application No. 121191245 (the “Determination”), states in pertinent part: “The request, to relocate accessory off-street parking spaces for twenty-one (21) cars and four (4) taxicabs from the hotel’s (Waldorf Astoria Hotel) ground floor driveway, as authorized by the New York City Board of Standards and Appeals (BSA) under Cal. No. 442-32-A, as amended on February 3, 1933, which has not been repealed, to the cellar and subcellar, is hereby denied. . . . The proposal . . . creates a new use in the cellar and subcellar that is subject to the off-street parking regulations in the Manhattan Core pursuant to Article I, Chapter 3 in accordance with ZR §13-10. The applicant did not demonstrate how the proposed accessory off-street parking spaces in the Building’s cellar and subcellar comply with the Manhattan Core parking regulations pursuant to Article I, Chapter 3.”

This is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of the Waldorf-Astoria Hotel (“Appellant”), alleging errors in the Determination pertaining to whether the continued use and relocation of existing off-street parking spaces complies with the Zoning Resolution—namely pre-1982 parking regulations that remain applicable under Z.R. § 13-07 and former Z.R. § 13-012.

Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding area.

A public hearing was held on this appeal on July 14, 2020, after due notice by publication in *The City Record*, and then to decision on the August 24, 2020.

At hearing, the Board’s commissioners expressed skepticism that the continued use and proposed relocation of existing off-street accessory parking spaces would violate the Zoning Resolution. Nothing in the record indicates that a 1933 resolution, under BSA Calendar Number 442-32-A, varied then-applicable zoning provisions, and this resolution’s terms address provisions related to fire safety that appear to have been superseded over the years by the enactment of subsequent building codes and fire codes. Instead, the record appears to indicate the presence of lawful accessory parking spaces at the Premises that pre-date April

29, 1982, allowing them to be subject to pre-1982 parking regulations. *See* Z.R. § 13-012 (1982); *id.* § 13-07 (2013).

The Department of Buildings, by letter dated August 5, 2020, submitted a revised determination, which states in pertinent part: “[T]he request that, pursuant to ZR §13-07, 28 parking spaces currently located within the driveway may be relocated to the cellar and subcellar of the Building, is hereby approved with the following condition: (1) Construction documents, including the Schedule A, filed under Alteration Type 1 work permit application No. 121191245 describe the 28 accessory off-street parking spaces in the cellar or subcellar. Each accessory parking space shall be identified as either accessory to the residential use (Use Group 2) or accessory to the hotel use (Use Group 5).”

Appellant now seeks withdrawal of this appeal.

*Therefore, it is Resolved*, that this appeal for interpretation shall be and it hereby is *withdrawn*.

Adopted by the Board of Standards and Appeals, August 24, 2020.

## 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 October 19-20, 2020, at 10 A.M., for deferred hearing.

## 2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28<sup>th</sup> Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28<sup>th</sup> Avenue a/k/a 25-92 41<sup>st</sup> Street, Block 684, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for continued hearing.



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## ZONING CALENDAR

**2019-9-BZ**

**CEQR #19-BSA-072R**

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** – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 29, 2020, acting on New Building Application No. 520364249, reads in pertinent part:

- “1. ZR 23-45: Proposed front yard is not in compliance with ZR 23-45; therefore, obtain board of standards and appeals approval.
2. ZR 23-461(c): Proposed side yard along west property line is not in compliance with ZR 23-461(c); therefore, obtain board of standards and appeals approval.”

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3A zoning district, the construction of a three-story, single-family detached residence that does not comply with the zoning requirements for side yards, open area, and front yards, contrary to Z.R. §§ 23-461(c) and ZR § 23-45.

A public hearing was held on this application on October 29, 2019, after due notice by publication in *The City Record*, with continued hearings on February 25, 2020, May 19, 2020, and July 28, 2020 and then to decision on August 24, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 1, Staten Island, recommends denial of this application citing concerns that the proposed project would alter the essential character of the neighborhood and would substantially impair the appropriate use or development of the adjacent properties. Specifically, the Community Board stated that the proposed zero foot side yard would impact an as-of-right development on the adjacent lot; the proposed reduction in the front yard frontage from ten feet to four feet would impact future street line development; the proposed curb cut at Targee Street would create a difficult logistical configuration; and the proposed two-car garage and parking are not feasible.

The Premises are located on the west side of Targee

Street, between Metcalfe Street and Hillside Avenue, within an R3A zoning district, on Staten Island. With approximately 95 feet of frontage along Targee Street, 42 feet of depth, and 1,776 square feet of lot area, the Premises are currently vacant.

The applicant states that the site was previously occupied with a residence from at least 1937 until 1995 when it was demolished and submits a Sanborn Map, DOB Demo Information and Department of Finance Tax Photos from 1940 and 1980 in support of this allegation.

The applicant proposes to construct a three-story, single-family detached residence which does not provide the minimum side yards, open area distance between buildings along the southern lot line, and front yard depth.

The proposed building would have 1,068 square feet of floor area (0.60 FAR), no side yards along the western and southern side lot lines, no open area along the southern side lot line, and a front yard with a depth of 4 feet. (The Board takes no position on whether the floor area bonus underneath the structural headroom in the roof is applicable to the proposed building when the attic is described as “non-occupiable” and the floor space is located under the ceiling of the second floor.) The Zoning Resolution requires one side yard with a minimum width of 8 feet, *see* Z.R. § 23-461(a), an 8-foot open area between buildings containing residences, *see* Z.R. § 23-461(c), a minimum required distance between buildings on adjacent lots of 8 feet, *see* Z.R. § 23-461, and a required front yard depth of 10 feet, *see* Z.R. § 23-45. Accordingly, the applicant seeks the relief requested herein.

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

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the Premises’ status as the only triangular, shallow, vacant interior lot in the area—that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district. The applicant describes the Premises as an interior lot with two side lot lines and one front lot line but no rear lot line. The applicant further states that the lot’s status as interior lot is distinct from a corner lot because it only has frontage on one street; is not bounded by streets; nor does it intersect two or more streets, which add to the unique physical conditions inherent in the Premises.

The applicant submitted a Study Area Report which demonstrates that, within the R3A zoning district surrounding the site, there are 18 other vacant interior lots in a three-block radius of the area. Of those 18 lots, only five (28 percent) cannot be developed as of right due to narrowness and small size. Of those five, another three lots (16 percent) are owned in conjunction with the adjacent lot(s) and used as a side yard or parking area. The remaining two (11 percent) those lots are owned with an adjacent vacant lot and combined with that site for a buildable

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development site.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 23-461 and 23-45 would result in a residence that is oddly shaped and only has sufficient space for one bedroom. The applicant represents that compliance with underlying zoning regulations would not permit the habitable development of the Premises unless a variance is granted.

Accordingly, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

Second, the applicant submits and the Board concurs that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

Third, the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that, because the proposed variance seeks to permit a single-family, detached residence, it would blend in with the character of the surrounding area, which includes a mix of existing single- and two-family detached, semi-detached and attached residences. Furthermore, the applicant states because it only seeks reductions in the side yard, open area regulations, and front yard and would adhere to all other bulk requirements of the zoning district, the proposed residence would not deviate from alter the character of the existing residences. The applicant represents that because the proposed detached residence is a permitted use under the applicable zoning, it. Additionally, applicant states that the proposed front yard reduction of ten feet to four feet helps to align the proposed residence with the adjacent building. In support of these contentions, the applicant submitted drawings and images of the residences adjacent to and across from the Premises as well as renderings comparing the heights of these residences and the proposed project. The proposed residence would be 31'-9" in height, which is comparable to the four adjacent residences which are all approximately 31'-1" in height.

Over the course of hearings, the Board raised concerns regarding the nature of the proposed landscaping at the property; the lack of windows on the lot line façade; and the original height of the proposed residence. In response, the applicant submitted plans demonstrating that the entire site, but for the location of the home, driveway and a walkway, would be landscaped. Furthermore, the applicant reduced the height of the residence from 34'-9" to 31'-1" and added windows to the lot line façade walls to better blend with the neighborhood character.

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

Fourth, the applicant represents that this lot was owned in common ownership with two lots adjacent lots (69 and 70) from 1928 until 1993, when the subject lot was taken by a tax lien foreclosure by the City of New York and sold in 2000. Lot 70 was subsequently subdivided into lots 70 and 71. The applicant further represents that the subject lot was again taken by the City of New York in 2017 for a tax lien foreclosure and then sold to the current owner. In support of this contention, the applicant submitted deeds from various years. The applicant represents that the dissolution of the common ownership as a result of the tax lien foreclosure does not constitute a self-created hardship by the current owner or predecessor in title.

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

Fifth, the applicant reiterates that the variance request is for the construction of a three-story, single-family, detached residence, which only seeks reductions for side yard, open area regulations—the minimum necessary to develop a residence at the Premises. The applicant submits that all other bulk requirements will be in full compliance with the Zoning Resolution. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA072R, dated January 22, 2019.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue a Type II determination under 6 NYCRR Part 617.5* and makes each and every one of the required findings under Z.R. § 72-21 to *permit*, within an R3A zoning district, the construction of a new single-family detached residence that does not provide the required side yards or front yard, contrary to Z.R. §§ 23-461 and 23-45, *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 30, 2020"- Eight (8) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: no side yards and a front yard with a depth of 4'-0", as illustrated on the Board-approved drawings;

THAT enclosure of the porch is not permitted to create additional floor area;

THAT a certificate of occupancy, also indicating this approval and calendar number (BSA Cal. No. 2019-9-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 May 13, 2025;

THAT this approval is limited to the relief granted by

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the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, August 24, 2020.

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## 2019-268-BZ

APPLICANT – Sheldon Lobel, P.C., for 1937 Coney Island LLC, owner.

SUBJECT – Application September 23, 2019 – 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.

PREMISES AFFECTED – 1938 Coney Island Avenue, Block 6617, Lot 0045, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 27, 2019, acting on New Building Application No. 321126517, reads in pertinent part:

“The proposed change of use within the building from Community Center (UG4) to commercial business offices at 6th and 7th story, would generate a need for 43 vehicles. This exceeds the provided valet parking capacity for 33 vehicles, as approved.

This post-approval change has to be referred to the Board of Standards and Appeals for a Special Permit for parking reduction of the proposed newly created offices.”

This is an application for a special permit, pursuant to Z.R. § 73-44, to permit the reduction of required accessory off-street parking spaces for a Use Group (“UG”) 6B office use (PRC-B1 parking category) contrary to Z.R. § 36-21.

A public hearing was held on this application on February 11, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 21, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 2, Brooklyn, recommends disapproval of this application. The Board also received two form letters in objection to this application, citing concerns over available neighborhood

parking and the potential for the special permit to impact the quality of life in the area.

The Premises are located on the northwest corner of Coney Island Avenue and Avenue P, in a C8-2 zoning district and in the Special Ocean Parkway District, in Brooklyn. With approximately 80 feet of frontage along Coney Island Avenue, 100 feet of frontage along Avenue P, and 8,000 square feet of lot area, the Premises are occupied by a proposed seven-story mixed-use commercial and community facility building, under construction.

The Board notes that its determination herein is also subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available. Pursuant to Z.R. § 73-44, the Board may reduce the required parking for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) at the Premises from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith.

Over the course of hearings, the Board raised concerns that the Premises could not safely accommodate the proposed parking configuration and, specifically, questioned whether safe maneuverability could be accomplished, adequate reservoir spaces could be provided, and fire safety concerns addressed.

The Fire Department also raised concerns and objected to the application, stating, by correspondence dated April 21, 2020, that they object and request that applications be filed with the Technical Management Unit in the Bureau of Fire Prevention for fire modeling, firefighter access and sprinkler protection for extra hazard storage (parking stackers). In addition, a review of filings made to DOB indicates that the original proposed parking stackers, approved by the Department of Buildings, were an approved model (MEA#186-00-E) that are now be replaced by custom-made parking stackers. The new proposed parking stackers must be reviewed by the DOB Office of Technical Certification and Research (OTCR).

The Fire Department further notes that the location of the proposed parking stackers, beneath the cantilever would increase the spread of smoke and fire to other areas above and adjacent to the structure. In addition, access to the parking stackers, as shown, would delay response and firefighting access to areas in the stacker. The occupancy classification for parking stackers (indoors and outdoors) are classified as extra hazard storage. Sprinkler plans submitted to the Board show a line of dry sprinklers heads, along the exterior wall in the cantilevered portion of the building. This protection is inadequate and does not provide sufficient coverage to the cars in the parking stackers. The Fire Department, along with the Department of Buildings, requires sprinkler protection at the rear and front areas of the cars, as well as above, below, and in-between, the platforms of the stackers.

Firefighter access, as shown on these plans, would

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impede the Fire Department's ability to control and suppress fire spread. The Fire Department would need access to each tier of the stackers and access to a standpipe hose outlet. There are numerous requirements for the protection of these parking stackers, that members of the Bureau of Fire Prevention Technical Management Unit should review these plans to provide information to the applicant. The Fire Department requests that the Board direct the applicant to submit applications to the Fire Department's Bureau of Fire Prevention, Technical Management Unit to review fire engineering studies regarding the cantilevered portion of the building, access and fire protection system of the parking stackers.

By letter, dated July 8, 2020, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, August 24, 2020.

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## 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 38<sup>th</sup> Street, Block 645, Lot 10, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to February 21-22, 2021, at 10 A.M., for adjourned hearing.

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## 2017-317-BZ

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district.

PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for continued hearing.

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## 2019-265-BZ & 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

Amendment of a previously approved application that permitted a building located within the bed of a mapped street contrary to General City Law 35. C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for continued hearing.

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## 2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for adjourned hearing.

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## 2019-271-BZ

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless c/o Amato Law Group, PLLC, for 3708 Hylan Boulevard Corp., owner.

SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, Block 5190, Lot 85, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for adjourned hearing.

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
AUGUST 24-25, 2020, 2:00 P.M.**

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

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**ZONING CALENDAR**

**2019-66-BZ**

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for continued hearing.

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**2019-201-BZ**

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corp., owner; Les Fitness LLC DBA Willy B CrossFit, lessee.

SUBJECT – Application August 2, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*Willy B CrossFit*) located in the cellar of an existing two-story building contrary to ZR §31-10. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, Block 306, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M., for continued hearing.

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**2019-280-BZ**

APPLICANT – Law Office of Jay Goldstein, PLLC, for Chelsea Park Corporation, owner.

SUBJECT – Application November 1, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (*SLT*) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies’ Mile Historic District.

PREMISES AFFECTED – 137 Fifth Avenue, Block 00849, Lot 0002, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for continued hearing.

**2019-307-BZ**

APPLICANT – Sheldon Lobel, P.C., for Havermeyer LLC, owner; Dimerock LLC d/b/a MetroRock Climbing Center, lessee.

SUBJECT – Application December 30, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (MetroROCK) to be located on portions of the cellar and first floors of proposed 23-story mixed-use building contrary to ZR §32-10. C4-3 zoning district located on the same zoning lot with the NYC Designated Landmark “The Dime Savings Bank of Williamsburg.

PREMISES AFFECTED – 277 South 5<sup>th</sup> Street a/k/a 263-279 South 5<sup>th</sup> Street, Block 2447, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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 5-6, 2020, at 10 A.M., for decision, hearing closed.

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**2020-5-BZ**

APPLICANT – Akerman LLP, for Dakkan Properties LLC, owner.

SUBJECT – Application January 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Orangetheory Fitness*) to be located on portions of the first floor of an existing eight-story mixed commercial and residential building contrary to ZR §42-10. M1-4/R7A Special Long Island City Special Purpose District.

PREMISES AFFECTED – 21-10 44<sup>th</sup> Drive, Block 00078, Lot 7501, Borough of Queens.

**COMMUNITY BOARD #2Q**

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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

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Volume 105, Nos. 35-37

September 25, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

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**2020-66-BZ**

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-----

**2020-67-A**

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**2020-68-BZ**

107-50 Queens Boulevard, Block 3239, Lot(s) 0009, Borough of **Queens, Community Board: 6**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (M Beauty Spa) contrary to ZR §32-10. C4-5X Special Forest Hills District. C4-5X district.  
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**2020-69-BZ**

44 New Lots Avenue, Block 3860, Lot(s) 0001, Borough of **Brooklyn, Community Board: 16**. Variance (§72-21) to permit the legalization of dwelling units contrary to ZR 42-10. M1-1 zoning district. M1-1, R2 district.  
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**2020-70-BZ**

1903 Homecrest Avenue, Block 7291, Lot(s) 0168, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district. R4-1 district.  
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**2020-71-BZ**

166 Coffey Street, Block 00585, Lot(s) 0040, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to permit the development of a three-story single-family home with a cellar contrary to ZR §42-10. M1-1 zoning district. M1-1 district.  
-----

**2020-72-BZ**

85 Jay Street, Block 00054, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district. M1-2/R8 (MX-2) district.  
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**2020-73-BZ**

2500 Park Avenue, Block 2322, Lot(s) 0005, Borough of **Bronx, Community Board: 2**. Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district. M1-4 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.**



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# CALENDAR

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## REGULAR MEETING

**NOVEMBER 9-10, 2020, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, November 9, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday November 10, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 5-98-BZ

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

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

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

**COMMUNITY BOARD #15BK**

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### 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**

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### 200-01-BZ

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

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

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

**COMMUNITY BOARD #8Q**

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### 256-02-BZ

APPLICANT – Friedman & Gotbaum LLP, by Shelly S. Friedman, Esq.

SUBJECT – Application March 16, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2020. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 7501,

Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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### 238-07-BZ

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

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

PREMISES AFFECTED – 5-17 47<sup>th</sup> Avenue, Block 28, Lot(s) 12, 15, 17, 18, 21, Borough of Queens.

**COMMUNITY BOARD #2Q**

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### 25-09-BZ

APPLICANT – Pryor Cashman LLP, for AJJ Canal, LLC, owner; UFC Gym, lessee.

SUBJECT – Application April 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment on the third floor of a three-story commercial building which expired on November 23, 2018; Amendment to permit a change in operator from Champion Fitness to UFC Gym; Waiver of the Board's Rules. M1-5B SoHo Iron Historic District.

PREMISES AFFECTED – 277 Canal Street, Block 209, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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# CALENDAR

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## APPEALS CALENDAR

### 2019-207-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application August 27, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

**COMMUNITY BOARD # 2Q**

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### 2020-16-A

APPLICANT – Eric Palatnik, P.C. for Fongtar Realty Inc., owner.

SUBJECT – Application January 31, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

**COMMUNITY BOARD #2Q**

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### 2020-40-A

APPLICANT – Goldman Harris LLC, for Allen Street Owner LLC, owner.

SUBJECT – Application May 6, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. C4-4A zoning district.

PREMISES AFFECTED – 139-141 Orchard Street, Block 415, Lot(s) 67, 63, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### 2020-60-A

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

SUBJECT – Application July 20, 2020 – Application filed pursuant to General City Law (“GCL”) 35, to allow the proposed development of a property within the mapped but unbuilt portion of a street; Waiver of the applicable height and setback regulations pursuant to 72-01 (g). C6-4 Special Downtown Brooklyn District.

PREMISES AFFECTED – 180 Ashland Place, Block 2095, Lot(s) 25, 26, 29, 7501, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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## ZONING CALENDAR

### 2019-278-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 9201 Fith LLC, owner.

SUBJECT – Application October 21, 2019 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District.

PREMISES AFFECTED – 9201 5<sup>th</sup> Avenue, Block 6109, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
SEPTEMBER 14-15, 2020, 10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**27-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner; Brooklyn Banya c/o Alona Kruglak, lessee.  
SUBJECT – Application December 27, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Banya*) which expired on October 16, 2016; Amendment Waiver of the Rules. C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 602-04 Coney Island Avenue, Block 5361, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 7, 2020, acting on DOB Alteration Type I Application No. 300326895, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as of right in the subject C2-3 (OP)/R5 zoning district and requires a special permit pursuant to Section 73-03 and 73-36 of the Zoning Resolution.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of a term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment (“PCE”) and expired on October 16, 2016.

A public hearing was held on this application on March 24, 2020, after due notice by publication in *The City Record*, with continued hearings on July 27, 2020, and August 24, 2020, and then to decision on September 14, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. The Board also received one letter in support of this application.

The Premises are located on a through lot with frontage on the west side of Coney Island Avenue and the east side of East 9th Street, between Beverly Road and Avenue C, within a c2-3/R5 zoning district and in the Special Ocean Parkway District, in Brooklyn. With

approximately 40 feet of frontage along each Coney Island Avenue and East 9th Street, a depth ranging from 126 feet to 129 feet, and 5,123 square feet of lot area, the Premises are occupied by an existing one-story plus mezzanine commercial building.

The Board has exercised jurisdiction over the Premises since October 16, 1996, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36 to permit the operation of a physical culture establishment on a portion of the first floor and mezzanine of the Premises on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term be for ten years, to expire on October 16, 2006; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; roof top air conditioning units comply with the New York City Noise Control Code and be in compliance with BSA-approved plans; any and all persons practicing massage at the premises possess a valid New York State license for such practice; the premises be maintained free of graffiti; 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 substantial construction be completed in accordance with Z.R. § 73-70.

On February 27, 2007, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to grant the approval of the requested layout modifications and extend the term for ten years, to expire on October 16, 2016, on condition that the use and operation of the PCE substantially conform to BSA-approved plans 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; a certificate of occupancy be obtained within one year of the date of the grant, by February 27, 2008; Local Law 58/87 compliance be reviewed and approved by DOB; 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 applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

By letter on July 8, 2008, the Board permitted a change in operating control of the PCE and approved minor modifications to the approved plans including the reconfiguration of partitions and services, the creation of a vestibule in space formerly occupied by a seating area, the installation of a doorway leading to East 9th Street on the first floor, the reduction in size of the men’s locker room, expansion of the office space, and the creation of a viewing

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# MINUTES

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balcony on the second floor and the reduction in the amount of signage, as in substantial compliance with the Board's grant under the subject calendar number.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant provided tax documents, company ledgers, and licenses as proof of continuous use between 2016 and the filing of this application. The applicant further represents that substantial prejudice would occur without this grant of this extension of term because the PCE has had a special permit since 1996, and the use has been continuous.

The applicant represents that the PCE continues to operate as "Banya" and that the hours of operation are Monday through Friday, 9:00 a.m. until 11:00 p.m. and Saturday and Sunday, 8:00 a.m. until 11:00 p.m.

The applicant states that a sprinkler system, and a fire alarm system will be maintained within the PCE space. On July 31, 2019, the Fire Department's Bureau of Fire Prevention issued a violation at the Premises after an inspection found that it had failed to obtain an operating permit from the Department of Buildings. By correspondence dated August 15, 2020, the Fire Department states that it is in receipt of the Public Assembly plan filed with the Department of Buildings under application number B00354766. These plans will be forwarded to the Bureau of Fire Preventions Licensed Place of Public Assembly ("LPPA") unit for their records for compliance with Violation Order Number E561791. Based upon the foregoing the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term, and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated October 16, 1996, as amended through February 27, 2007, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for ten years, expiring October 16, 2026, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received September 10, 2020"- Seven (7) sheets; and *on further condition*:

That no outdoor use shall be permitted;

That the ADA accessible shower and changing room must be provided at the first floor as per the BSA-approved plans;

THAT this grant shall be limited to a term of ten years, expiring October 16, 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 roof top air conditioning units shall comply with the New York City Noise Control Code and be in compliance with BSA-approved plans;

THAT any and all persons practicing massage at the Premises shall possess a valid New York State license for such practice;

THAT the premises shall be maintained free of graffiti;

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 27-96-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 May 2, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, September 14, 2020.

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# MINUTES

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## 51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corp., owner.

SUBJECT – Application January 16, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a dance studio (UG 9) and a physical cultural establishment (*Push Fitness Club*) which expired on December 12, 2016; Amendment to permit a change in hours of operation for the PCE; Waiver of the Board’s Rules of Practice and Procedure. C1-2R2A zoning district.

PREMISES AFFECTED – 188-02 Union Turnpike, Block 7266, Lot 1, Borough of Queens.

## COMMUNITY BOARD #8Q

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an amendment, and an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the operation of a dance studio and a physical culture establishment (“PCE”) and expired on December 12, 2016.

A public hearing was held on this application on April 28, 2020, after due notice by publication in *The City Record*, with continued hearings on May 4, 2020, June 29, 2020, and August 10, 2020 and then to decision on September 14, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 8, Queens, recommends approval of this application.

The Premises are located on the south side of Union Turnpike, between 188th and 189th Street, within a C1-2/R2A zoning district, in Queens. The Premises have approximately 200 feet of frontage along Union Turnpike, 100 feet of frontage along 188th Street and 189th Street, 20,140 square feet of lot area, and are currently occupied by an existing one-story plus cellar commercial building. In addition to the Use Group (“UG”) 9 PCE and dance studio, which are the subject of this application, the building is occupied by several UG 6 uses including a juice bar, a combat club, a dance shop, a bagel shop, and a pizzeria.

The Board has exercised jurisdiction over the Premises since December 12, 2006, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the operation of a PCE in a portion of the cellar and legalization of an existing dance studio in a portion of the cellar and first floor on condition that any and all work substantially conform to drawing 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; the term be for ten years, to expire on December 12, 2016; the hours of the PCE be limited to 5:00 a.m. until 11:00 p.m., daily; the conditions appear on the certificate of occupancy; a new

certificate occupancy be obtained within two years from the date of the grant, by December 12, 2008; Local Law 58/87 compliance be reviewed and approved by the DOB; means of egress from the cellar be as reviewed and approved by DOB; and fire-safety measures, including full sprinklering, be installed and/or maintained as shown on the Board-approved plans.

On February 10, 2009, under the subject calendar number, the Board amended the resolution to extend the time to obtain a certificate of occupancy to May 10, 2010, on condition that all use and operations substantially conform to all BSA-approved drawings associated with the prior grant.

On May 25, 2010, under the subject calendar number, the Board further amended the resolution to grant an extension of time to obtain a certificate of occupancy to May 25, 2011, to permit a 1,072 sq. ft. expansion of the PCE on the first floor, and to permit a change in the operator of the PCE on further condition that any and all work substantially conform to drawings with the application; signage on the site comply with C1 district regulations; the above condition be listed on the certificate of occupancy; there be no change in ownership or operating control of the PCE without prior approval from the Board; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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.

On August 14, 2012, under the subject calendar number, the Board further amended the resolution to grant an extension of time to obtain a certificate of occupancy to August 14, 2013 and to permit a 2,332 sq. foot expansion of the PCE on the first floor, on further condition that any and all work substantially conform to drawings filed with the application; signage on the site comply with C1 district regulations; the above condition be listed on the certificate of occupancy; there be no change in ownership or operating control of the PCE without prior approval from the Board; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On June 23, 2015, under the subject calendar number, the Board further amended the resolution to grant an extension of time to obtain a certificate of occupancy to June 25, 2016, and to permit a 1,056 sq. foot expansion of the UG 9 dance studio on the first floor on further condition that any and all work substantially conform to drawings as

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they apply to the objection; signage on the site comply with C1 district regulations; the applicant obtain a Public Assembly Permit for the PCE located on the first and cellar of the building prior to obtaining the certificate of occupancy; the Department of Buildings ensure compliance with all accessibility requirements; there be no change in ownership or operating control of the PCE without prior approval from the Board; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than two years after the expiration of the term, the applicant requests a waiver pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(3)(ii) of the Board's Rules to permit the filing of this application.

The applicant also seeks an amendment to change the hours of operation to 5:00 a.m. to 12:00 a.m. Monday through Thursday; 5:00 a.m. to 11:00 p.m. on Friday; 7:00 a.m. to 9:00 p.m. on Saturday; and 8:00 a.m. to 8:00 p.m. on Sunday.

The applicant represents that the Premises continues to operate as "Push Dance Studio" and "American Dance and Drama Studio." The dance school uses 2,254 square feet of floor area at the first floor and 3,473 square feet of floor space in the cellar, and the PCE uses 3,074 square feet of floor area at the first floor and 8,647 square feet of floor space in the cellar.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated April 23, 2020, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler) and a fire alarm system that has been inspected and tested satisfactory to the department's rules and regulations. Based upon the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

In response to the Board's comments at hearing, the applicant revised the drawings to demonstrate compliance with the Board's signage condition, removed extraneous signage, repaired the fence along 189th Street, and provided information about accessibility compliance.

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

Based upon its review of the record, the Board has determined that the requested waiver, amendment, and extension of term are appropriate with certain conditions as

set forth below. The Board notes that the term of the special permit has been reduced to reflect the period of time the PCE operated without approval.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated December 12, 2006, as amended through June 23, 2015, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years to expire on December 12, 2026, to grant an extension of time to obtain a certificate of occupancy to May 18, 2022; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received August 11, 2020' — Ten (10) sheets; and *on further condition*:

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

THAT the hours of operation shall be limited to Monday through Thursday, 5:00 a.m. until 12:00 a.m. and Friday through Sunday, 5:00 a.m. until 11:00 p.m.;

THAT the means of egress from the cellar shall be as reviewed and approved by DOB;

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

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 51-06-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 May 18, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, September 14, 2020.

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**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**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance granted by the Board pursuant to Z.R. § 73-243, which permitted the operation of an accessory drive-through to an eating and drinking establishment and expired on May 12, 2019 and an amendment to change the operator of the eating and drinking establishment.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on August 24, 2020, and then to decision on September 14, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the west side of Nostrand Avenue, between Gravesend Neck Road and Avenue V, in a C1-2/R4 zoning district, in Brooklyn. The Premises have approximately 49 feet of frontage along Nostrand Avenue, approximately 49 feet of frontage along Gravesend Neck Road, 6,566 square feet of lot area and are occupied by a one-story eating and drinking establishment, operated as a Popeye’s, with accessory drive-through.

The Board has exercised jurisdiction over the Premises since December 20, 1955, when, under the BSA Calendar No. 837-55-BZ, the Board granted a variance to permit the Premises to be occupied for the parking of motor vehicles of patrons and employees in connection with the supermarket located at 2901-2911 Gravesend Neck Road on condition that the term be for 10 years, to expire on December 20, 1965; the plot be leveled substantially to the grade of Gravesend Neck Road, treated with clean gravel or steam cinders, property rolled and surfaced with a binder; there be erected on all lot lines a woven wire fence of the chain link type, erected on a masonry base to a total height of 5' 6" with no openings therein except one, to Gravesend Neck Road, 20' wide, as shown on plans filed with the application with curb cut opposite of similar width; such opening be

fitted with gates which shall be kept closed when the supermarket is closed; the sidewalks abutting the premises be reconstructed or repaired to the satisfaction of the Borough President; no signs be erected except there may be a sign attached to the fence at the opening, stating that the parking use is only for patrons and employees of the supermarket, provided that this sign does not exceed 50 sq. ft. in area, is not illuminated and does not extend beyond the building line; such portable fire fighting appliances be maintained as the fire commissioner direct; suitable bumpers be maintained along the fences for protection as proposed; if illumination is required, same be on metal pipe standards, equipped with metal reflectors so arranged as to reflect toward the center of the lot and away from the adjoining residential occupancies; during the term of the variance, the premises be occupied for no other use and no building be erected thereon except there be a shelter for the sole use of the attendant, not over 100 sq. ft. in area and one story in height; and all permits required be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution.

On May 12, 2009, under the subject calendar number, the Board amended the resolution and granted a special permit, pursuant to Z.R. § 73-243, to permit the operation of an accessory drive-through facility in connection with an as-of-right eating and drinking establishment (Use Group “UG” 6), on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term be for five years, to expire on May 12, 2014; 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; exterior lighting be directed away from the adjacent residential uses; the above conditions appear on the certificate of occupancy; all signage conform with the underlying C1 district regulations; the approval is 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; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On May 15, 2018, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the special permit to extend the term for five years, to expire on May 12, 2019 on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the site be maintained free of debris and graffiti; parking and queuing space for the drive-through be provided as indicated on the Board-approved plans; all landscaping or buffering be maintained as indicated on the Board-approved plans; exterior lightening be directed away from adjacent residential uses; signage conform with the underlying C1 zoning district regulations; the above conditions appear on the certificate of occupancy; the certificate of occupancy be obtained within

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four years, by May 15, 2022; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The term of the special permit having expired, the applicant seeks an extension and an amendment to change the operator of the eating and drinking establishment. The applicant represents that the Premises will now operate as a “Starbucks,” and the accessory drive-through will operate daily, from 5:30 a.m. to 11:00 p.m.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution dated December 20, 1955, as amended through May 15, 2018, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for five years, expiring May 12, 2024 and amend the operator, on condition that all work and site conditions shall conform to drawings filed with this application marked ‘Received August 6, 2020’- Twelve (12) sheets; and *on further condition*:

THAT the term of the special permit shall expire on May 12, 2024;

THAT the hours of operation of operation of the accessory drive-through shall be limited to 5:30 a.m. to 11:00 p.m., daily;

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

That parking and queuing space for the drive-through shall be provided as indicated on the Board-approved plans;

THAT all landscaping or buffering shall be maintained as indicated on the Board-approved plans; exterior lighting be directed away from adjacent residential uses;

THAT signage shall conform with the underlying C1 zoning district regulations;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 247-08-BZ”), shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 18, 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; and

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

Adopted by the Board of Standards and Appeals,

September 14, 2020.

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**162-09-BZ**

APPLICANT – Akerman LLP., for Steinway 30-33 LLC, owner, PFNY, LLC, lessee.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (*Planet Fitness*) on the cellar, first and second floors of a two-story commercial building which expired on December 1, 2018; Waiver of the Board’s Rules of Practice and Procedure.

PREMISES AFFECTED – 30-33 Steinway Street, Block 00680, Lot 0032, Borough of Queens.

**COMMUNITY BOARD #1Q**

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

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment (“PCE”) and expired on December 1, 2018, and an amendment to change the previously approved hours of operation and correct the floor area.

A public hearing was held on this application on June 30, 2020, after due notice by publication in *The City Record*, with a continued hearing on August 24, 2020, and then to decision on September 14, 2020. Vice-Chair Chanda and Commissioner Sheta performed an inspection of the site and surrounding neighborhood. Community Board 1, Queens, recommends approval of this application.

The Premises are located on a through lot with frontage on Steinway Street and Newtown Road, between 30th Avenue and 31st Avenue, partially within a C4-2A zoning district and partially within an R5 zoning district<sup>1</sup>, in Queens. With approximately 88 feet of frontage along Steinway Street, 98 feet of frontage along Newton Road, and 9,515 square feet of lot area, the Premises are occupied by an existing two-story with cellar and mezzanine commercial building.

The Board has exercised jurisdiction over the Premises since June 8, 2010, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, the legalization of a PCE in the cellar, first floor, and second floor of the Premises, and a special permit, pursuant to Z.R. § 73-52, to permit the extension of the C4-

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<sup>1</sup> Pursuant to the Board’s June 8, 2010 approval under BSA Cal. No. 162-09-BZ, the Board permitted an extension of the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district.



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2A zoning district regulations 25 feet into the R5 zoning district, on condition that all work substantially conform to drawings as they apply to the objection, filed with application; the term be for ten years, to expire on December 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 within one year, by June 8, 2011; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for portions related to the specific relief granted; and the Department of Buildings ensure compliance with the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years after the expiration of the term, the applicant requests a waiver pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2). In accordance with the Board's Rules, the applicant provided images of the Premises to demonstrate continuous use of the PCE. The applicant further represents that substantial prejudice would result without the grant of the waiver to allow filing of the extension of term because of the significant financial loss associated with stopping operations at the PCE. The applicant represents that the Premises continues to operate as "Planet Fitness," no longer offers massage therapist services, and seeks an amendment to permit 24-hour, seven-day per week operation. Due to adjustments to the interior layout of the PCE, the applicant also seeks an amendment to reflect a change in the PCE space, from 17,941 square feet to 17,886 square feet. The PCE occupies 8,367 square feet of floor space in the cellar, 1,037 square feet of floor area on the first floor, and 8,482 square feet of floor area on the second floor.

The applicant states that a sprinkler system, and a fire alarm system will be maintained within the PCE space. By correspondence dated June 29, 2020, the Fire Department states that the establishment was last inspected by the Bureau's Licensed Public Place of Assembly (LPPA) unit, on January 6, 2020. The inspection was satisfactory and the FDNY permit was installed. The Premises have a fire suppression system (sprinkler) and a fire alarm system that have been tested and with current FDNY permits. 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.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term, and the Board finds that the circumstances warranting the original

grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution dated June 8, 2010 so that as amended this portion of the resolution shall read: "to extend the term of the special permit for ten years, expiring December 1, 2028, and permit new hours of operation, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received September 2, 2020"- Six (6) sheets; and *on further condition*:

THAT the frequency of trash collection for the PCE shall be six nights per week, alternating between recyclables and non-recyclables;

THAT trash shall be stored in the cellar until taken outside for pickup;

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

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

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 162-09-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 18, 2022;

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

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

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

Adopted by the Board of Standards and Appeals, September 14, 2020.

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## 126-10-BZ

APPLICANT – Akerman LLP, for Breit Canarsie Owner LLC, owner.

SUBJECT – Application January 23, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expires on October 26, 2020. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, located on west side of Remsen Avenue between Avenue D and Ditmas Avenue. Block 7920, Lot 5. Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on October 26, 2020, and an amendment to the hours of operation at the physical culture establishment (“PCE”).

A public hearing was held on this application on August 24, 2020, after due notice by publication in *The City Record*, and then to decision on September 14, 2020. Community Board 18, Brooklyn, recommends approval of this application.

The Premises are located on the west side of Remsen Avenue, between Ditmas Avenue and Avenue D, within an M1-1 zoning district, in Brooklyn. With approximately 80 feet of frontage along Remsen Avenue, 105 feet of depth, and 8,448 square feet of lot area, the Premises are occupied by an existing two-story commercial building.

The Board has exercised jurisdiction over the Premises since October 26, 2010, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to allow the operation of a PCE on the first and second floor of the building on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term of the grant expire on October 26, 2020, there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; and fire-safety measures be installed and maintained as shown on the Board-approved plans.

The applicant now seeks an extension of term of the special permit and an amendment to the hours of operation. The applicant represents that the PCE continues to operate as “Planet Fitness.”

The applicant states that a sprinkler system, and a fire alarm system will be maintained within the PCE space. By correspondence dated August 17, 2020, the Fire Department

states that the Premises have a fire suppression system (sprinkler) that was signed-off by the Department of Buildings and is also protected by a fire alarm system that has been tested by the FDNY and is satisfactory to the rules and regulation. Based upon the foregoing the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain.

Based upon its review of the record, the Board has determined that the requested extension of term and amendment are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby amend the resolution dated October 26, 2010 so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring October 26, 2030, and permit an amendment in the PCE hours of operation, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 12, 2020”- Six (6) sheets; and *on further condition*:

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the hours of operation may be 24 hours a day, 7 days a week;

THAT this grant shall be limited to a term of ten years, expiring October 26, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 126-10-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 18, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 14, 2020.

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**CORRECTION: This resolution adopted on September 14, 2020, under Calendar No. 179-10-BZ, is hereby corrected to read as follows:**

**179-10-BZ**

APPLICANT – Akerman LLP, for E & R Duffield Associates, owner.

SUBJECT – Application January 17, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness on the cellar, first and second floors of a two-story commercial building which expired on January 1, 2020. C6-4.5 Special Downtown Brooklyn District.

PREMISES AFFECTED – 249 Duffield Street, Block 146, Lot 2, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on January 1, 2020 and an amendment to the hours of operation at the physical culture establishment (“PCE”).

A public hearing was held on this application on August 10, 2020, after due notice by publication in *The City Record*, and then to decision on September 14, 2020. Community Board 2, Brooklyn, recommends approval of this application. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the site and surrounding neighborhood.

The Premises are located on the east side of Duffield Street, between Willoughby Street and Fulton Street, within a C6-4.5 zoning district and the Special Downtown Brooklyn District, in Brooklyn. The site has approximately 98 feet of frontage along Duffield Street, 85 feet of depth, 8,330 square feet of lot area, and is occupied by an existing two-story with cellar commercial building.

The Board has exercised jurisdiction over the premises since January 11, 2011, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R.

§ 73-36, to permit the operation of a 21,243 square foot PCE at the cellar (7,809 square feet), first floor (7,576 square feet) and second floor (5,858 square feet) of the building on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the term of the grant expire on January 1, 2020; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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.

The applicant now seeks an extension of the term of the special permit and an amendment to the hours of operation. The applicant represents that the PCE continues to operate as “Planet Fitness”, and the hours of operation will now be Monday through Sunday, 24 hours per day. The applicant states that a sprinkler system, and a fire alarm system will be maintained within the PCE space. By correspondence dated August 10, 2020, the Fire Department states that the establishment has been inspected by the Bureau’s Licensed Public Place of Assembly (LPPA) unit and two Violation Orders have been issued for failure to obtain a Public Assembly permit, which are still outstanding. The Department has confirmed that on June 13, 2017, the Department of Buildings approved the Public Assembly application #321478557. No permit has been obtained from the Department of Buildings for this application. Applicant submitted evidence that it filed an application for an updated Place of Assembly Certificate of Operation, DOB NOW Job No. B00184162 on March 19, 2020 which has not yet been approved. These premises have a fire suppression system (sprinkler) and a fire alarm system that has been tested and FDNY permits are current. Based upon the foregoing the Fire Department is issuing a “Conditional Letter of No Objection” due to the open violations. The Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of term and amendment are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby amend the resolution dated January 11, 2011 so that as amended this portion of the

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resolution shall read: “to extend the term of the special permit for ten years, expiring January 1, 2030, and permit an amendment in the PCE hours of operation, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received September 4, 2020’- Six (6) sheets; and *on further condition*:

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the hours of operation shall be Monday through Sunday, 24 hours a day;

THAT this grant shall be limited to a term of ten years, expiring January 1, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 179-10-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 18, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 14, 2020.

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## **853-53-BZ**

APPLICANT – Eric Palatnik, P.C. for Knapp LLP, owner; Bolla EM Realty, LLC, lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on October 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, Block 7429, Lot 0010, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for adjourned hearing.

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## **207-68-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Steve Green/Deerfield Meadows Inc., owner.

SUBJECT – Application September 21, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the use manufacture and storage of paper vacuum bags UG’s 16 & 17), with accessory parking, which expired on June 18, 2013; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north Newburg Street. Block 10315, Lot 0134. Borough of Queens.

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for continued hearing.

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## **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**

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 November 9-10, 2020, at 10 A.M., for decision, hearing closed.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129<sup>th</sup> Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for adjourned hearing.

## APPEALS CALENDAR

### 2018-190-A

APPLICANT – Richard Lobel, P.C., for 18 Union St. LLC, owner.

SUBJECT – Application November 26, 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 R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district.

PREMISES AFFECTED – 32-18 Union Street, Block 4954, Lot 35, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 402141516 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on May 18, 2020, after due notice by publication in *The City Record*, with a continued hearing on July 27, 2020, and then to decision on September 14, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application.

The Premises are located on the west side of Union Street, between 32nd Avenue and 33rd Avenue, in an R5D zoning district, in Queens. With approximately 25 feet of frontage along Union Street, 83 feet of depth, and 2,075 square feet of lot area, the Premises are occupied by a four-

story building (the “Building”).

On June 22, 2005, DOB determined that the Building would comply with all applicable zoning regulations and issued a New Building permit authorizing work associated with the application to construct a four-story residential building on July 20, 2005.

Effective April 22, 2009 (the “Effective Date”), the City amended the Zoning Resolution, changing the zoning district from an R6 zoning district to an R5D zoning district, such that the Building does not comply with bulk regulations pertaining to building height, front yards, side yards, parking, and maximum number of dwelling units.

Because not “all work on” the Building’s “foundations had been completed prior to” the Effective Date, the building permits authorizing work associated with the New Building Application “automatically lapse[d]” on the Effective Date and “the right to continue construction . . . terminate[d]” under ZR § 11-331. Accordingly, the applicant seeks to establish the right to continue construction of the Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the New Building Application.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”). Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

As noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Building in accordance with the New Building Application before the Effective Date.

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 Building. In particular, the applicant submits that the entire foundation and superstructure of the Building were completed prior to the Rezoning; DOB records of professionally certified

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plumbing inspections show that gas, sanitary, and storm piping were substantially completed prior to the Rezoning; and, furthermore, publicly available satellite and street-view images of the Premises and surrounding area show that the superstructure was erected in its current form as recently as 2007 prior to the Rezoning. The applicant submits that the construction completion is substantial and amounts to approximately 70 percent of the required work prior to the Effective Date.

The applicant submitted evidence that, before the Effective Date, substantial expenses had been incurred. Due to foreclosure on the prior owner of property, the applicant could not provide specific expenditure information, but, based on completion of the foundation, superstructure, and completed interior work, estimates that approximately \$961,884 (67 percent) of the total development cost of \$1,428,262 has been expended. Accordingly, the record reflects that, before the Effective Date, the owner had incurred substantial expenses to further development of the Building.

The applicant submitted evidence that, if the right to continue construction of the Building were denied, the owner would suffer serious loss—that is, substantial economic harm. In particular, the applicant submits that the Building’s height, front yards, side yards, FAR, parking, and interior layout were built pursuant to the R6 and do not comply with existing underlying R5D zoning regulations. Specifically, to comply with applicable yard regulations, demolition of the superstructure would be necessary. Because of the substantial nature of the losses pertaining to total demolition and reconstruction of the fully constructed Building to comply with yard requirements, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein. Accordingly, the record reflects that, if the right to continue construction of the Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

Accordingly, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with 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 (“DOB”), acting on New Building Application No. 402141516 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment on April 22, 2009, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years and six months, expiring March 14, 2025, 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.

Adopted by the Board of Standards and Appeals, September 14, 2020.

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## **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 December 14-15, 2020, at 10 A.M., for continued hearing.

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## **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 November 30-December 1, 2020, at 10 A.M., for adjourned hearing.

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## **2018-105-A**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 04699, Lot 22, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for continued hearing.

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## 2019-69-A & 2019-70-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for  
SUBJECT – Application April 3, 2019 – Proposed  
construction of a new two-family not fronting on a legally  
mapped street contrary to General City Law Section §36.  
R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue,  
Block 3417, Lot(s) 174, 173, Borough of Staten Island.

### COMMUNITY BOARD # 2SI

**ACTION OF THE BOARD** – Laid over to January  
11-12, 2021, at 10 A.M., for adjourned hearing.

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## 2019-281-A

APPLICANT – New Cingular Wireless PCS, LLC, for  
Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a  
New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a  
Forest Promenade Shopping Center, Block 1479, Lot 1,  
Borough of Staten Island.

### COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, Commissioner Sheta, and  
Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October  
5-6, at 10 A.M., for decision, hearing closed.

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## ZONING CALENDAR

### 2020-5-BZ

#### CEQR #20-BSA-056Q

APPLICANT – Akerman LLP for Dakkan Property LLC,  
owner, 92 Fitness Crew NY6, LLC, lessee.

SUBJECT – Application January 13, 2020 – Special Permit  
(§73-36) to permit the operation of a physical cultural  
establishment (*Orangetheory Fitness*) to be located on  
portions of the first floor of an existing eight-story mixed  
commercial and residential building contrary to ZR §42-10.  
M1-4/R7A Special Long Island City Special Purpose  
District.

PREMISES AFFECTED – 21-10 44<sup>th</sup> Drive, Block 00078,  
Lot 7501, Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, Commissioner Sheta, and  
Commissioner Scibetta.....5  
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”),  
dated February 12, 2020, acting on DOB Alteration Type I  
Application No. 421912050, reads in pertinent part:

“Proposed physical culture establishment in M1-4  
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.”

This is an application under Z.R. §§ 73-36 and 73-03  
to legalize, on a site located within an M1-4/R7A zoning  
district and in the Special Long Island City Mixed Use  
District, the operation of a physical culture establishment  
(“PCE”) on a portion of the first floor of an existing eight-  
story with cellar mixed-use residential and commercial  
building, contrary to Z.R. § 42-10.

A public hearing was held on this application on  
August 25, 2020, after due notice by publication in *The City  
Record*, and then to decision on September 14, 2020. Vice-  
Chair Chanda performed an inspection of the site and  
surrounding neighborhood.

The Premises are located on the south side of 44<sup>th</sup>  
Drive between 21st Street and 23rd Street, within an M1-  
4/R7A zoning district, in Queens. With approximately 48  
feet of frontage along 44<sup>th</sup> Drive, 100 feet of depth, and  
4,750 square feet of lot area, the Premises are occupied by  
an existing eight-story with cellar mixed-use residential and  
commercial building.

The Board notes that its determination is subject to  
and guided by Z.R. § 73-03. The Board notes that pursuant  
to Z.R. § 73-04, it has prescribed certain conditions and  
safeguards to the subject special permit in order to minimize  
the adverse effects of the special permit upon other property  
and community at large. The Board notes further that such  
conditions and safeguards shall be incorporated in the  
building permit and certificate of occupancy of the subject  
building, and that failure to comply with such conditions or  
restrictions shall constitute a violation of the Zoning  
Resolution and may constitute the basis for denial or  
revocation of a building permit or certificate of occupancy  
and for all other applicable remedies. As a threshold matter,  
the Board notes that the site is within the boundaries of a  
designated area in which the subject special permit is  
available.

The applicant represents that the PCE occupies 2,911  
square feet of floor area on a portion of the first floor with  
an exercise studio with exercise equipment, areas for  
reception, retail, restrooms, and showers. The PCE began  
operation on January 18, 2020, as “Orangetheory Fitness,”  
with the following hours of operation: 5:00 a.m. to 9:00  
p.m., weekdays, and 7:00 a.m. to 6:00 p.m., weekends.

The applicant represents that PCE use will neither  
impair the essential character nor the future use or  
development of the surrounding area because the PCE is  
located inside an existing building within an area  
characterized by compatible local commercial uses  
including retail stores, eating and drinking establishments,  
and other PCEs. Accordingly, the Board finds that the PCE  
is so located as to not impair the essential character or future  
use or development of the surrounding area.

The applicant submits that the PCE contains facilities  
for classes, instruction and programs for physical  
improvement. The Board finds that the subject PCE use is

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consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include an acoustic suspended ceiling and 1/4-inch-thick rubber flooring above an isolated spring slab. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and the PCE will produce no negative impact to the surrounding area.

The applicant states that a sprinkler system and a fire alarm system, with connection to a central monitoring station, will be maintained within the PCE space. By correspondence dated August 25, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) that has been tested and has current FDNY permits. A fire alarm system is also installed and tested satisfactorily to the Department's rules and regulations. Therefore, the Fire Department has no objection to the application. Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-056Q, dated September 14, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-4/R7A zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing eight-story with cellar mixed-use residential and commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received January 16, 2020"- Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 28, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No.2020-5-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 March 21, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 14, 2020.

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## **2018-142-BZ**

APPLICANT – Dennis P. George, owner.

SUBJECT – Application August 29, 2018 – Variance (§72-21) to permit the development of a two-story plus attic & cellar Use Group ("UG") 2 residential building contrary to ZR §§22-00 (Zero Lot line building) & § 32-461a (Side Yard less than minimum required). R3-1 zoning district.

PREMISES AFFECTED – 204-23 46<sup>th</sup> Road, Block 7304, Lot 53, Borough of Queens.

## **COMMUNITY BOARD #19Q**

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for adjourned hearing.

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## 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

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 5-6, at 10 A.M., for decision, hearing closed.

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## 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 18<sup>th</sup> Avenue, Block 5439, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for continued hearing.

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## 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

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 November 9-10, 2020 at 10 A.M., for decision, hearing closed.

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## 2019-188-BZ

APPLICANT – Pryor Cashman LLC, for McDonald’s USA LLC, owner.

SUBJECT – Application July 12, 2019 – 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.

PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, with frontages on East Gun Hill Road, Tenbroeck Avenue, and Pearsall Avenue. Block 4617, Lot 40. Borough of the Bronx.

### COMMUNITY BOARD #11BX

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 November 9-10, 2020 at 10 A.M., for decision, hearing closed.

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## 2019-196-BZ

APPLICANT – Eric Palatnik, P.C., for Jane Goldberg, owner.

SUBJECT – Application July 22, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*La Casa Day Spa*) contrary to ZR §42-10. M1-5M zoning district.

PREMISES AFFECTED – 41 East 20<sup>th</sup> Street, Block 849, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020 at 10 A.M., for adjourned hearing.

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## 2019-203-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020 at 10 A.M., for adjourned hearing.

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# MINUTES

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## 2019-205-BZ

APPLICANT – Goldman Harris LLC, for Jean’s Place Housing Development Fund Corporation, owner.

SUBJECT – Application August 16, 2019 – Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 485 Van Sinderen Avenue, Block 3799, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020 at 10 A.M., for adjourned hearing.

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## 2019-296-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2374 Concourse Associates, LLC & 101 E. Burnside Partners LLC, owners; Acqua Ancien Bath New York LLC, lessee.

SUBJECT – Application November 26, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Aire Ancient Baths) contrary to ZR §32-10. C6-2A zoning district. Tribeca East Historic District.

PREMISES AFFECTED – 84 Franklin Street, Block 175, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #1M

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 November 30-December 1, at 10 A.M., for decision, hearing closed.

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## 2020-9-BZ

APPLICANT – Paul F. Bonfilio, R.A., for Emanuele Viola, owner

SUBJECT – Application January 14, 2020 – Variance (§72-21) to permit the development of a two-family, two story dwelling contrary to underlying bulk requirements. R4A zoning district.

PREMISES AFFECTED – 26-11 123<sup>rd</sup> Street, Block 4294, Lot 0019, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to January 11-12, 2020 at 10 A.M., for adjourned hearing.

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## REGULAR MEETING MONDAY-TUESDAY AFTERNOON SEPTEMBER 14-15, 2020, 2:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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## ZONING CALENDAR

### 2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over January 11-12, 2021, at 10 A.M., for continued hearing.

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### 2020-35-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for 4201 Main Street LLC, owner.

SUBJECT – Application April 15, 2020 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C1-2/R6 and R6 zoning district.

PREMISES AFFECTED – 136-18 Maple Avenue, Block 5135, Lot 3, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over November 9-10, 2020, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

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NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 105, Nos. 38-40

October 16, 2020

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## DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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NASR SHETA

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# DOCKETS

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**2020-74-BZ**

1500 Williamsbridge Road, Block 4082, Lot(s) 0005, Borough of **Bronx, Community Board: 2**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R4 zoning district. C2-2 in R4 district.  
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**2020-75-BZ**

474 7th Avenue, Block 00785, Lot(s) 0043, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.  
-----

**2020-76-BZ**

8902 5th Avenue, Block 6066, Lot(s) 0026, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-19) to permit the operation of a day care facility (TLE) contrary to ZR §32-10. C8-2 Special Bay Ridge Purpose District. C8-2 district.  
-----

**2020-77-BZ**

68 Austin Avenue, Block 3116, Lot(s) 0089, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit the enlargement of an existing building contrary to ZR 23-45 (front yard setback). R3-1 zoning district. R3-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**NOVEMBER 30-DECEMBER 1, 2020 , 10:00 A.M. & 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, November 30, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday December 1, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 2020-56-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for H Hotel LLC, owner.  
SUBJECT – Application July 14, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. M1-6 and C5-3 Special Midtown District.  
PREMISES AFFECTED – 58-60 West 39<sup>th</sup> Street, Block 00840, Lot 0081, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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### 281-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tarnoff for CIM Group LP, owner.  
SUBJECT – Application February 11, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the fifth and sixth floors of a 42-story building which expired on February 23, 2020. M1-6 Special Hudson Square District.  
PREMISES AFFECTED – 246 Spring Street, Block 491, Lot(s) 1201-1594; 1101-113, Borough of Manhattan.  
**COMMUNITY BOARD #2M**

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## ZONING CALENDAR

### 2019-162-BZ

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6<sup>th</sup> Ave LLC, owner.  
SUBJECT – Application May 30, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (floor area ratio and open space ratio) and ZR §23-47 (rear yard). R2 zoning district.  
PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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### 2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.  
SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.  
PREMISES AFFECTED – 81-04 166<sup>th</sup> Street, Block 7026, Lot 21, Borough of Queens.  
**COMMUNITY BOARD # 8Q**

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### 2019-279-BZ

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.  
SUBJECT – Application October 22, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3A Special South Richmond District (Lower Density Growth Management Area).  
PREMISES AFFECTED – 4119 Richmond Avenue, Block 5268, Lot 37, Borough of Staten Island.  
**COMMUNITY BOARD #3SI**

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### 2020-14-BZ

APPLICANT – Akerman LLP, for 34-10 12<sup>th</sup> Realty LLC, owner.  
SUBJECT – Application January 30, 2020 – Variance (§72-21) to permit the enlargement of a one-story, non-conforming manufacturing establishment (UG 17) contrary to ZR §§22-10 and 52-41. R5 zoning district.  
PREMISES AFFECTED – 34-10 12<sup>th</sup> Street, Block 326, Lot 29, Borough of Queens.  
**COMMUNITY BOARD #1Q**

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### 020-19-BZ

APPLICANT – Amato Law Group, PLLC, for Tangram House South Sponsor LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee.  
SUBJECT – Application March 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) located in the cellar and a portion of the first floor of an existing building contrary to ZR §32-10. C4-2 zoning districts.  
PREMISES AFFECTED – 144-27 39<sup>th</sup> Avenue, Block 4972, Lot 7504, Borough of Queens.  
**COMMUNITY BOARD #7Q**

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# CALENDAR

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**2020-22-BZ**

APPLICANT – Amato Law Group, PLLC, for 3312 36<sup>th</sup> Avenue Realty LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee.

SUBJECT – Application March 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) within an existing building contrary to ZR §42-10. M1-1 zoning district

PREMISES AFFECTED – 33-12 36<sup>th</sup> Avenue, Block 602, Lot 34, Borough of Queens.

**COMMUNITY BOARD # 1Q**  
-----**2020-23-BZ**

APPLICANT – Goldman Harris LLC, for LIC Site B-1 Owner, LLC, owner.

SUBJECT – Application March 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Performance Lab) to be located on a portion of the first floor and cellar of an existing building contrary to ZR §42-10. M1-6/R10 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 28-07 Jackson Avenue, Block 420, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**  
-----**2020-38-BZ**

APPLICANT – Law Office of Jay Goldstein, for 22-12 Jackson Avenue Owners, LLC, owner; Blue Giant Fitness d/b/a F45, lessee.

SUBJECT – Application May 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located on a portion of the first floor of an existing building contrary to ZR §42-10. M1-5/R7X Special Long Island City Purpose District.

PREMISES AFFECTED – 22-18 Jackson Avenue, Block 72, Lot 65, Borough of Queens.

**COMMUNITY BOARD #2Q**  
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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
OCTOBER 5-6, 2020, 10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

**SPECIAL ORDER CALENDAR**

**58-30-BZ**

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens  
**COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M. for continued hearing.

**551-37-BZ**

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M. for continued hearing.

**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 8-9, 2021, at 10 A.M. for adjourned hearing.

**803-61-BZ**

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

**141-66-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application May 13, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010; Extension of Time to Obtain a Certificate of Occupancy. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9<sup>th</sup> Street, Block 450, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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 November 9-10, 2020, at 10 A.M. for decision, hearing closed.

**528-71-BZ**

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board’s Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board’s resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory

PREMISES AFFECTED – 133-40 150<sup>th</sup> Street, Block 12116, Lot 0001, Borough of Queens.

**COMMUNITY BOARD # 12Q**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for adjourned hearing.



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# MINUTES

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## **313-77-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Gilsey House, Inc., owner.

SUBJECT – Application February 21, 2020 – 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. M1-6 zoning district. Gilsey House Individual Landmark.

PREMISES AFFECTED – 1200 Broadway and 17-27 West 29<sup>th</sup> Street, Block 831, Lot 20, 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 November 9-10, 2020, at 10 A.M. for decision, hearing closed.

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## **334-78-BZ**

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.

SUBJECT – Application August 23, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 24, 2019. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M. for continued hearing.

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## **389-85-BZ**

APPLICANT – Walter T. Gorman, P.E., P.C., for GTY-CPG (QNS/BX) Leasing, Inc, owner; Global Partners LP, lessee.

SUBJECT – Application February 21, 2019 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of a Automotive Service Station (UG 16B) (Mobil) which expired on November 26th 2015; Waiver of the Board’s Rules.

PREMISES AFFECTED – 2090 Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

### **COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

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## **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 January 11-12, 2021, at 10 A.M. for adjourned hearing.

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## **23-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

### **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

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## **114-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152<sup>nd</sup> Street, Block 4531, Lot 35, Borough of Queens.

### **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for continued hearing.

-----

# MINUTES

## 303-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation (Lots 7&8), owner; SoBro Development Corporation (Lot 6), lessee.

SUBJECT – Application March 6, 2020 – Amendment of a previously approved Variance (§72-21) to allow a new mixed-use building consisting of residential units and community facility space. The Amendment seeks additional dwelling units.; Extension of Time to Complete Construction which expired on December 15, 2019; Waiver of the Board’s Rules of Practice and Procedure. R6 & C1-4 zoning districts.

PREMISES AFFECTED – 506-510 Brook Avenue, Block 2274, Lot(s) 6, 7, 8, Borough of Bronx.

### COMMUNITY BOARD #1BX

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 November 30-December 1, 2020, at 10 A.M. for decision, hearing closed.

## APPEALS CALENDAR

### 58-13-A

APPLICANT – Law Office of Jay Goldstein, for Sylvaton Holdings LLC, owner.

SUBJECT – Application December 23, 2019 – Amendment of a previously approved application permitting the development of a 3-story residential building located within the bed of a mapped street contrary to General City Law §35. R4 and M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place (28, 32 & 35 Sylvaton Terrace), Block 2827, Lot(s) 200, 203, 205, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 23, 2019, acting on New Building Application No. 520118596, reads in pertinent part:

“Proposed construction on a 12-10(a) Zoning lot located within the bed of a mapped street is contrary to Section 35 of the General City Law. Therefore, Board of Standards and Appeals approval is required.”

This is an application for an amendment to previously approved application permitting the development of a three-

story residential building located within the bed of a mapped street contrary to General City Law (“GCL”) § 35.

A public hearing was held on this applications on March 3, 2020, after due notice by publication in *The City Record*, with continued hearings on June 1, 2020, and August 10, 2020, and then to decision on October 5, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 1, Staten Island recommends approval of this application on condition that a parking spot be provided for all units developed.

The Premises are bounded by Wiman Place to the west, Sylvaton Terrace to the north, and Church Lane to the south, partially within an R4 zoning district and partially within an M3-1 zoning district, on Staten Island. The Premises will have approximately 142 feet of frontage along Wiman Place 190 feet of frontage along Church Lane, 185 feet of frontage along Sylvaton Terrace, 26,874 square feet of lot area, and is currently vacant.

The Board has exercised jurisdiction over the Premises since January 14, 2014, when, under the subject calendar number, the Board modified requirements under General City Law § 35 to permit a three-story, 12-unit residential building with eight accessory off-street parking spaces on condition that all work substantially conform to the drawing as they apply to the objection, filed with the application; the building be fully sprinklered and provided with interconnected smoke alarms in accordance with the BSA approved plans; DOB review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution, including planting strip requirements; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

By letter dated May 30, 2018, the Board permitted modifications to the plans approved in connection with the grant as in substantial compliance with the Board’s grant; specifically, a reduction in the front yard along Wiman Place to 10', an increase in the side yard parallel to Wiman Place to 18', and the elimination of the parking ramp along Sylvaton Terrace, on condition that the Department of Buildings ensure compliance with all the applicable provisions of the Zoning Resolution, Building Code or any other relevant law,.

The applicant now seeks an amendment to include tax lots 200 and 203 as part of the zoning lot; increase the front yard along Wiman Place from 10' to 23', 5' feet of which will be a paved sidewalk; reduce the front yard along Sylvaton Terrace from 18' to 10', while maintaining and additional 5' sidewalk beyond the 10' front yard; reduce the front yard along Church Lane from 18' to 10', five feet of which will be paved sidewalk and five feet of which will be landscaped; add a 30' rear yard equivalent which will also serve to locate the required parking away from the front

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yards and provide additional planting areas; increase the total number of dwelling units from 10 to 34; increase the floor area/floor area ratio from 11, 123 square feet (0.96 FAR) to 32,700 square feet (1.32 FAR).

At hearings, the Board requested that the applicant illustrate the as-of-right development to explain the need for the amendment to the GCL waiver. In response, the applicant presented four as-of-right plans, two of which would result in a substantial loss in floor area and two of which would result in less designed and planted street frontage on all three streets, as additional parking would be required. Each as-of-right scheme would result in a less desirable pedestrian experience than the proposed project.

By correspondence dated August 10, 2020, the Fire Department states that it has no objections to the application, provided that the applicant complies with the following requirements: the entire building must be fully sprinklered in conformity with the sprinkler provisions of the New York City Fire Code Section 503.8.3 as well as the Referenced Standard 17-2B of the New York City Building Code; the entire building shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with the New York City Building Code.

By letter dated January 7, 2020, the Department of Environmental Protection (“DEP”) states that there are no existing sewers or water mains in the bed of Wiman Place between Sylvaton Terrace and Church Lane. The City Drainage Plan No. PRD-A, sheet 3 of 6, dated May of 1973, for the above location, calls for a future 10" diameter sanitary sewer and 12"/15" diameter storm sewer in the bed of Wiman Place between Sylvaton Terrace and Sylva Lane. DEP requires the applicant to submit a survey/plan showing the following: a 35-foot wide sewer corridor in the bed of Wiman Place along lot # 205 for the installation, maintenance, and/or reconstruction of the future 10" diameter sanitary sewer and 12"/15" diameter storm sewer. By letter dated January 10, 2020, DEP added that the applicant submitted a revised drawing, dated January 9, 2020, which shows a 35' wide sewer corridor in the bed of Wiman Place for the installation, maintenance and/or reconstruction of the future 10" diameter sanitary sewer and the 12"/15" diameter storm sewer. Based on the above, DEP has no objections to the proposed application.

By letter dated October 2, 2020, the Department of Transportation (“DOT”) states that According to the Staten Island Borough President’s Topographical Bureau, Wiman Place between Sylvaton Terrace and Church Lane is mapped to a 60-foot width on the Final City Map. The City has no title to the mapped street, but there is a Corporation Counsel Opinion of Dedication for 14 to 15 feet as-in-use, dated March 8, 1985, on the easterly portion of Wiman Place (known as “Church Lane”). DOT has reviewed all pertinent documents submitted to its office and has the following comments:

“The Final Builders Pavement Plan, as submitted to the Department of Buildings, must be submitted to DOT’s Sidewalk and Inspection

Management and Pedestrian Ramp Program for review and approval of the pedestrian ramps.

The site plan must be revised to show the pedestrian ramp at the intersection of Wiman Place and Sylvaton Terrace to be as parallel to the crosswalk as drainage and grading will allow. The orientation of pedestrian ramps must allow for the bottom required clear space to be entirely within the crosswalk.

Revise the site plan to show the extension of the crosswalk across Wiman Place at its intersection with Sylvaton Terrace to the edge of the pavement.

Re-stripe the double yellow centerline to be centered within the existing 40.5 paved surface to ensure appropriate transitions to the existing double yellow centerline at either end of the street.

DOT recommends that the applicant transfer the title of properties that fall within the proposed roadway and sidewalk on the west side of Wiman Place to the City so that the City can maintain the built portion of Wiman Place in its entirety. Otherwise, it will create a maintenance conflict since the city is required to maintain the CCO portion of Wiman Place.”

DOT adds that the improvement of Wiman Place at this location, which would involve the taking of a portion of the applicant’s property (Block 2827, Lot 205), is not presently included in DOT’s Capital Improvement Program, but this does not preclude a change in the program in the future.

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 *amend* the resolution dated January 14, 2014, so that as amended this portion of the resolution shall read: to *permit* construction within the bed of a mapped, but unimproved, street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 2, 2020”-Four (4) sheet; and *on further condition*:

THAT the entire building must be fully sprinklered in conformity with the sprinkler provisions of the New York City Fire Code Section 503.8.3 as well as the Referenced Standard 17-2B of the New York City Building Code;

THAT the entire building shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with the New York City Building Code;

THAT the Final Builders Pavement Plan, as submitted to the Department of Buildings, must be submitted to DOT’s Sidewalk and Inspection Management and Pedestrian Ramp Program for review and approval of the pedestrian ramps;

THAT the site plan must be revised to show the pedestrian ramp at the intersection of Wiman Place and

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Sylvaton Terrace to be as parallel to the crosswalk as drainage and grading will allow;

THAT the orientation of pedestrian ramps must allow for the bottom required clear space to be entirely within the crosswalk;

THAT the site plan must be revised to show the extension of the crosswalk across Wiman Place at its intersection with Sylvaton Terrace to the edge of the pavement;

THAT the double yellow centerline must be re-stripped to be centered within the existing 40.5 paved surface to ensure appropriate transitions to the existing double yellow centerline at either end of the street.

THAT the applicant shall transfer the title of properties that fall within the proposed roadway and sidewalk on the west side of Wiman Place to the City so that the City can maintain the built portion of Wiman Place in its entirety;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 58-13-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York, resulting from an outbreak of novel coronavirus disease, by May 18, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 5, 2020.

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## 2019-281-A

APPLICANT – New Cingular Wireless PCS, LLC, for Mason Avenue Holdings LLC, owner.

SUBJECT – Application November 7, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 965 Richmond Avenue a/k/a Forest Promenade Shopping Center, Block 1479, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta.....3

Negative: Chair Perlmutter and Commissioner Scibetta.....2

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”),

dated October 10, 2019, acting on Alteration Application No. 520377887 (the “Determination”), reads in pertinent part:

The proposed monopole is not accessory to telecommunication building with use group 6D and contrary to ZR 33-15 therefore as per ZR 32-30 and ZR 32-31, a special permit is required by The Board Of Standards And Appeals.

This is an appeal for interpretation, under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought by New Cingular Wireless PCS (“Appellant”), alleging errors in the Determination regarding whether a cellular monopole constitutes an as-of-right telephone exchange or other communications equipment structure (Z.R. § 32-15) or a non-accessory radio or television tower that requires a special permit (Z.R. § 73-30).

The Board has considered all of the arguments on appeal, and, for the reasons that follow, a majority of the Board ultimately agrees with Appellant and finds that a cellular monopole constitutes a communications equipment structure that is allowed as of right at the Premises.

### I.

The Premises are bounded by Richmond Avenue to the west, Forest Avenue to the north, and Willow Road West to the east, within a C2-2 (R3-2) zoning district, on Staten Island. With approximately 360,870 square feet of lot area, the Premises are occupied by three commercial buildings that comprise a shopping center.

The Department of Buildings issued the Determination on October 10, 2019, concluding that the proposed approximately 75-foot-tall cellular monopole structure is a “non-accessory radio or television tower” that always requires a special permit under Z.R. § 73-30. As such, this structure is not permitted as of right in any zoning district.

Appellant commenced this appeal on February 10, 2020, alleging that the proposed cellular monopole constitutes a telephone exchange building or other communications equipment structure that is allowed as of right in certain zoning districts under Z.R. § 32-15(D).

A public hearing was held on this application on March 3, 2020, after due notice by publication in *The City Record*, with continued hearings on June 29, 2020, and September 14, 2020, and then to decision on October 5, 2020. Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood.

### II.

The issue before the Board is whether a purpose-built monopole with attached cellular antennas constitutes an “other communications equipment structure” that is allowed as of right in certain zoning districts under Z.R. § 32-15(D) or whether this structure is instead a non-accessory “radio tower” that requires a special permit under Z.R. § 73-30.

### III.

Because this is an appeal for interpretation, pursuant to Z.R. § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in

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strictly applying and interpreting the provisions of’ the Zoning Resolution. 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*.

As discussed herein, a majority of the Board finds that the subject cellular monopole is permitted as of right in the subject zoning district under Z.R. § 32-15(D) based on its review of: (a) the Zoning Resolution provisions, (b) applicable case law, (c) Department of Buildings administrative guidance and practices, (d) the position of two commissioners, and (e) the arguments presented by Appellant and by DOB. The Board’s minority decides that limitations on bulk included in the U.G. 6D definition for “other communications equipment structure” and the required interpretation of overlapping regulations justify the classification of a cellular monopole as a “radio or television tower” that requires a special permit pursuant to Z.R. § 73-30, and the case law upon which the majority relies is distinguishable.

## A.

A majority of the Board finds that the cellular monopole is a Z.R. § 32-15(D) “other communications equipment structure,” because cellular monopoles to which cellular antennas are attached are a public utility use. A cellular monopole is not a “radio or television tower” under Z.R. § 73-30, as such classification would trigger greater scrutiny of this public utility use without instruction or justification within the Zoning Resolution. Further, cellular monopoles are structurally and operationally distinct from “radio and television towers”, and Department of Buildings’ administrative guidance demonstrates a history of classifying the use under Z.R. § 32-15(D).

Case law supports the Board’s position that a purpose-built cellular monopole is a public utility structure, and is, like other public utilities, afforded a level of deference under the Zoning Resolution. In *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364 (1993), the Court of Appeals held that a “cellular telephone company is a ‘public utility’” and that “the construction of an antenna tower ... to facilitate the supply of cellular telephone service is a ‘public utility building.’”

While it is clear that the existing cellular telephone industry and landscape could not have been anticipated when the provisions of the Zoning Resolution were drafted, public utilities (including electric or gas substations) and “radio or television towers” have been treated separately in the Zoning Resolution. For example, Z.R. § 73-14 reads:

### *Public Service Establishments*

In all Residence Districts, the Board of Standards and Appeals may permit electric or gas utility substations, limited in each case to a site of not more than 10,000 square feet, potable water pumping stations, or telephone exchanges or other communications equipment structures, provided that the following findings are made:

(a) that such use will serve the residential area

within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the residential area, which make it necessary to locate such use within a Residence District[.]”

Characterizing a cellular monopole as a “radio or television tower” and, thus, subjecting it to Z.R. §§ 73-03 and 73-30 special permit requirements, including finding that “the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood” would, in practice, treat this public utility provider differently and with more scrutiny than other public utilities without justification, absent instruction otherwise in the Zoning Resolution. The Board concludes that the construction of a cellular monopole to facilitate the supply of cellular telephone service is a public utility structure, and a U.G. 6D public service establishment that is an “other communications equipment structure” under Z.R. § 32-15(D).

## B.

The Zoning Resolution classifies certain “[p]ublic service establishments serving small areas” under Use Group 6. Z.R. § 32-15(D). Allowed as of right in certain commercial zoning districts, these public service establishments include “telephone exchanges or other communications equipment structures.”

A purpose-built cellular monopole is a “structure” used for “communications equipment” and is appropriately classified as an “other communications equipment structure”. Cellular monopoles, a structure onto which the cellular antennas that service cellular telephones are attached, are operationally distinct from “radio or television towers” in that the former is not used for the transmission of radio or television frequencies. The Board notes further that structural distinctions between a cellular monopole and a “radio or television tower” justify its classification under Z.R. § 32-15(D) as a “U.G. 6D Public Service Establishments” “telephone exchanges or other communication structure” and militates against its classification as a “radio or television tower” requiring a special permit under Z.R. § 73-30. A cellular monopole is a structure, akin to a flagpole, with affixed antennas that emit frequencies. By contrast, almost the entirety of a “radio or television tower” structure emits frequencies. Radio and television towers must be constructed taller to cover a larger geographic area, whereas cellular monopoles service a smaller area at a shorter height for reasons related to coverage capabilities and irrespective of zoning regulations.

Further, contrary to assertions made by DOB, Z.R. § 11-22 does not apply. Z.R. § 11-22 reads in pertinent part:

Whenever any provision of this Resolution and any other provisions of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over the *use* of land, or over the *use* or *bulk* of *buildings* or *other*

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structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

Zoning provisions relating to “telephone exchanges or other communications equipment structures”, a public utility use, are distinct from those relating to “radio or television towers”. The uses are fundamentally different, the provisions of Z.R. §§ 32-15(D) and 73-30 do not cover any of the same subject matter, nor do they impose overlapping or contradictory regulations over the use of land, the use or bulk of buildings or other structures.

Therefore, the majority of the Board interprets the Zoning Resolution to classify a cellular monopole as an “other communications equipment structure” under Z.R. § 32-15(D).

## C.

A majority of the Board considered the application of the DOB’s Technical Policy and Procedure Notice #5/98 (the “TPPN”) and the arguments presented and determine that a cellular monopole is an “other communications equipment structure” under Z.R. § 32-15(D), given the DOB’s practice, as articulated in the TPPN, of treating the use with “the deference afforded other public utilities” and classifying said structures as “Use Group 6 ‘communication equipment structures.’” DOB created the TPPN out of concern over how to appropriately address the proliferation of cellular technology absent a proper definition in the Zoning Resolution. The TPPN reads in pertinent part:

### A. Zoning Exemption

The Department recognizes that cellular telephony has become a prevalent form of communication essential to the public interest. As such, those companies wishing to erect cellular antennas and install related equipment are to be treated with the deference afforded other public utilities. Thus, to the extent the cellular antennas and related equipment meet the specifications and requirements set forth below, they are not subject to zoning. These specifications and requirements are based on the standards for cellular telephony at this time, and are designed to permit necessary and customary public utility service. To the extent the antenna and related equipment do not meet these criteria, they may be classified as Use Group 6 “communication equipment structures,” and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.1

1. The antennas must be attached to a building or other structure that has a use independent of supporting the antennas.

2. The antennas may not extend higher than six (6) feet above the height of the roof or parapet on the roof, or six feet above any penthouse or bulkhead, if placed on such penthouse or bulkhead.
3. The antennas shall each have an area no more than 8.45 square feet or one meter in diameter.
4. The related cellular equipment must not occupy more than 5% of the floor area on a zoning lot or 400 square feet.

The TPPN was created to foster emerging cellular telephone technology and recognized that “companies wishing to erect cellular antennas and install related equipment are to be treated with the deference afforded other public utilities.” When an antenna meets the specifications and requirements of the TPPN, the proposed installation may qualify as an accessory use and is “not subject to zoning.” By contrast, when the proposed installation exceeds the TPPN criteria, the TPPN states that it “may be classified as Use Group 6 ‘communication equipment structures’,” and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.” The TPPN limits the height and installation methods applicable to this permitted exceptional use; it regulates the bulk, but not the use, of the antenna.

DOB’s application of the TPPN cannot be ignored. For over 20 years, the TPPN has stated that cellular “antenna and related equipment” that do not meet the criteria set forth in the TPPN “may be classified as Use Group 6 ‘communication equipment structures’,” yet at the same time DOB characterizes those same antennas when mounted on monopoles as “radio or television towers” requiring special permits pursuant to Z.R. § 73-30 in commercial and manufacturing districts and also in its final determinations required for special permit applications in residence districts. Cellular equipment cannot be characterized as a U.G. 6D use in a residence district in the TPPN and also as a “radio or television tower” in a commercial or manufacturing district. The structure onto which the cellular antennas are mounted, whether attached to a building or to a monopole should not determine whether the use is classified as a “radio or television tower” or an “other communications equipment structure.” All uses with identical land use characteristics and impacts must be classified under the same Use Group.

## D.

A minority of the Board concluded that the purpose-built monopole with attached cellular antennae is a “radio or television tower” that requires a special permit, pursuant to Z.R. § 73-30, and is not a U.G. 6D use, “other communications equipment structure”.

The Zoning Resolution § 32-15(D) describes “telephone exchanges or other communications equipment structures” as a building typology without floor area, but with lot coverage, and provides specific bulk limitations to control building height. The subject monopole, by contrast, has neither floor area, nor lot coverage. Its form and height

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1 Z.R. § 22-21 provides, in pertinent part, that, in residence districts, public utility or public service facilities (“telephone exchanges or other communications equipment structures”), as well as “radio or television towers, non-accessory,” are permitted by special permit in accordance with standards set forth in Article VII, Chapter 3.

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are, therefore, in the opinion of the minority, unregulated if characterized as a “telephone exchange or other communications equipment structure.” In addition, while, a freestanding monopole supporting cellular equipment may be a public utility, the list in Z.R. § 32-15(D) is not exhaustive and the title, “Public Service Establishments,” is not in and of itself a use group.

The minority asserts that cellular monopoles should not be permitted anywhere as of right. Radio and television towers share the same characteristics of a cellular monopole: both emit radiofrequencies, and both can be located on lots with other uses or on top of other structures. The nature of a monopole is a structure with no meaningfully calculable lot coverage, which becomes impossible to regulate for height under U.G. 6D. Allowing cellular monopoles on an as-of-right basis would produce an undesirable result.

Further, the Board considered the position put forth by one commissioner that Z.R. § 11-22 should apply. That commissioner argued that both Z.R. §§ 73-30 and 32-15(D) are provisions relating to structures used for radiofrequency emissions and impose overlapping or contradictory requirements. Pursuant to Z.R. § 11-22, the provisions of Z.R. §§ 73-30 and 73-03 should apply, and not Z.R. § 32-15. Both Z.R. §§ 73-30 and 32-15(D) cover the same subject matter and Z.R. § 73-30 imposes higher standards, specifically, that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood. Therefore, as per Z.R. § 11-22, Z.R. § 73-30 should apply.

The Board considered the position put forth by two commissioners that *Rosenberg* is inapposite to the instant appeal. In *Rosenberg*, the town’s zoning board had denied the cellular telephone company’s variance application to permit the construction of a cellular tower in a residence district, and the court concluded that the proper standard of review for a use variance of such a structure should be the public utility exception to the test for practical difficulties and unnecessary hardship set forth in *Matter of Consolidated Edison Co. v Hoffman*, 43 N.Y.2d 598.

The subject cellular monopole, by contrast, is either a non-accessory radio or television tower requiring a special permit, pursuant to Z.R. § 73-30, or an as of right use, pursuant to Z.R. § 32-15(D), hence the minority concludes that the public utility characterization established in *Rosenberg* is irrelevant to the instant case since special deference is not required for as of right or special permit uses.

E.

## Appellant’s Position

*Rosenberg* is specifically relevant, holding that “the construction of an antenna tower [. . .] to facilitate the supply of cellular telephone service is a ‘public utility building’ within the meaning of a zoning ordinance.” *Rosenberg* at 371. Consistent with this and the TPPN, were the cellular monopole proposed in a residence district, a special permit pursuant to Z.R. §§ 22-21 and 73-14, to permit “telephone exchanges or other communications

equipment structures” would be appropriate. The subject use identified in Z.R. § 73-14 anticipates that the same use is permitted as of right in commercial or manufacturing districts.

Further, while the proposed bulk of a cellular monopole is not relevant to the classification of its use, the Zoning Resolution incorporates appropriate controls on the bulk of cellular monopoles as U.G. 6D “other communications equipment structures.” Zoning regulations governing setbacks and sky exposure planes, as well as the fundamental structural, operational, and technical differences between cellular monopoles and radio or television towers, relating to the differences in frequency emissions and range, ensures that cellular monopoles do not risk excessive heights in commercial zoning districts. Specifically, cellular monopoles are not built to the maximum as-of-right heights that might be permitted on commercial zoning lots, the average height of which is 85 feet, due to matters of engineering design, building code compliance, and operational capabilities that service a smaller area when compared to radio and television towers, irrespective of zoning regulations. Radio and television towers, by contrast, must be constructed taller to cover a larger geographic area. As such, the Zoning Resolution anticipates and incorporates oversight, review, and approval of these structures.

A review of cellular monopoles permitted as of right as U.G. 6D “other communications equipment structures,” and the TPPN demonstrate that DOB has historically classified cellular monopoles as U.G. 6D uses. It is hardly precedent that applicants pursued special permits under Z.R. § 73-30 for a monopole, which was not even legally required by the Zoning Resolution, when there is an overwhelming record that includes express zoning interpretations issued by the DOB’s Deputy Commissioner in 1998 (i.e., the TPPN) and over thirty cellular monopoles permitted as of right in mixed commercial and manufacturing zoning districts over two decades.

By insisting that cellular monopoles are not U.G. 6D uses, DOB ignores the 50 years-old distinctions in the Zoning Resolution assigning separate use classifications for public utility facilities and radio or television towers. It is not suggested that a cellular monopole is the exact equivalent of a telephone exchange building as then contemplated. However, the Zoning Resolution has not been amended and, absent legislative action to do so, DOB’s history of permitting cellular monopoles as an as of right U.G. 6D use cannot be ignored.

Z.R. § 11-22 is not implicated at all in this appeal. A threshold matter, that there are “overlapping or contradictory regulations” related to the use of land for a cellular monopole, is absent. There is nothing contradictory or overlapping about two different land uses identified in a zoning code like here: one for public utility telephone exchanges/other communications equipment structures under U.G. 6D and the other for radio or television broadcast towers. DOB fundamentally ignores the words “radio or television” in relation to the word “tower” as part

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of a very specific, separate, and limited land use, conflating and manufacturing a claim of “overlap,” and grossly expanding and misinterpreting the express language of the Zoning Resolution.

## DOB’s Position

*Rosenberg* is not relevant, as the instant appeal involves an interpretation of a zoning use classification, not a standard of review for a variance. Further, *Rosenberg* discusses a variance, while cellular monopoles are constructed pursuant to special permits.

Special permits granted by the Board for cellular monopoles have been pursuant to Z.R. § 73-30, not Z.R. § 73-14. *See e.g.*, BSA Cal. Nos. 20-09-BZ and 24-08-BZ.

“Radio or television tower” is a more appropriate use classification for cellular monopoles, as the Zoning Resolution intended U.G. 6D for building-like structures. The term “other communications equipment structures” was likely included to capture the unmanned building-like structures similar to telephone exchange buildings but used for other purposes (e.g., automated repeater stations). Such equipment structures were not “buildings” under the Z.R. § 12-10 definition, as the term “building” excluded structures not accessible for human use. However, the phrase “other communications equipment structures” appropriately addressed the technology at that time, which included buildings containing large amounts of equipment or serving the network in a different capacity but possessing substantially similar land use characteristics to telephone exchanges. Cellular monopoles are nothing like the telephone exchange buildings or other communication equipment structures that were constructed in previous decades and a free-standing cellular antenna tower possesses the land use characteristics of a radio tower.

Controls are necessary to limit the heights of cellular monopoles. When U.G. 6D was amended to place physical limitations on out-of-context building-like structures, at no point did the City Planning Commission contemplate regulations for freestanding monopole antennas as part of U.G. 6D because such structures require a special permit under Z.R. § 73-30. A case study performed by DOB demonstrates that, on an actual lot with a C1-2 zoning district overlay, applying the Zoning Resolution sky exposure plane rules and setback requirements would permit a cellular monopole with a height of 402 feet as of right. This result was never anticipated nor intended by the Zoning Resolution. The Zoning Resolution has a mechanism to control the height of structures with land use characteristics like radio towers: the special permit process. If the subject cellular monopole is classified as a U.G. 6D use, the City will not be able to read in any limitation of height should an applicant want the 400-foot tower as described above. The Zoning Resolution must be interpreted in a way that applies to all situations, even if not presently proposed.

Assuming a cellular monopole could be considered a U.G. 6D use, there is sufficient overlap in the subject matter covered by the provisions of Z.R. §§ 32-15(D) and 73-30 and, thus, Z.R. § 11-22 applies. Given the choice between classifying cellular towers as either a radio tower use or a

U.G. 6D other communications equipment structure use, Z.R. § 11-22 dictates that the Board classify it as a radio tower, and Z.R. §§ 73-30 and 73-03 would govern, which are more restrictive and impose higher standards as a special permit. An application for a use that the Board may modify or deny for failure to meet specified findings is, by definition, “more restrictive or imposes higher standards” than a use that is allowed as of right, with no stated height limitations.

## IV.

Based on the foregoing, the Board finds that the subject cellular monopole constitutes a U.G. 6D use and is permitted as of right in the subject zoning district.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *grant* this appeal for interpretation, and the decision of the Department of Buildings, dated October 10, 2019, acting on Alteration Application No. 520377887, shall be and hereby is *reversed*.

Adopted by the Board of Standards and Appeals, October 5, 2020.

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**2018-198-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Debbie Ann Culotta, owner.

SUBJECT – Application December 12, 2018 – Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 85 Trenton Court, Block 6708, Lot 13 (tent.), Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

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**2019-82-A**

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019 – 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 district.

PREMISES AFFECTED – 430 St. Marks Place, Block 16, Lot 120, 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 October 19-20, 2020, at 10 A.M. for decision, hearing closed.



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## 2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M. for adjourned hearing.

## 2019-182-A

APPLICANT – Dominic V. DeSantis – McLaren Engineering Group, for Therese Braddick, New York City Department of Parks and Recreation.

SUBJECT – Application June 27, 2019 – Variance pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, waiver of Sections G304.2, Item 6 (no new construction to be located seaward of the Mean High Tide in the V-Zone) and G304.2 Item 2 (The lowest portion of the lowest horizontal structural member of the lowest floor shall be at or above design flood elevation).

PREMISES AFFECTED – 1 Marina Road, Block 1789, Lot 65, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to December 14-15, 2021, at 10 A.M. for continued hearing.

## 2020-46-A

APPLICANT – Deirdre A. Carson, Esq., for 1248 Associates LLC (c/o Hidrock Properties), owner.

SUBJECT – Application May 26, 2020 – Extension of Time to Complete Construction of a new building on the site as a new temporary certificate of occupancy for the entire building may not be obtained by January 31, 2021.

PREMISES AFFECTED – 12-14 East 48<sup>th</sup> Street, Block 1283, Lot 11, 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 October 19-20, 2020, at 10 A.M. for decision, hearing closed.

## ZONING CALENDAR

### 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** – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a variance under Z.R. § 72-21 to permit a four-story, ten-unit residential building, in an M1-1 zoning district, that would not comply with applicable zoning regulations for use, contrary to Z.R. § 42-00.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings on April 1, 2020 and June 30, 2020, and then to decision on October 5, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 4, Brooklyn, recommends disapproval of this application. By correspondence dated November 16, 2017, the Community Board states:

The board members primarily expressed concerns about the proposed project not being in context with the rest of the block and the need for affordability that is deeper than the current market rate rents. The proposed project location on Moffat Street is currently lined with primarily two-family row houses with potential for landmark (historic district) status. The proposed four-story multiple-dwelling would rise far above the rest of the homes on the bloc, although it would conform to majority residential use. Additionally, given the rapid redevelopment of the neighborhood, affordability and access to diverse range units, including two and three bedrooms, remain a consistent community concern and priority.

The Premises are located on the south side of Moffat Street, between Central Avenue and Wilson Avenue, in an M1-1 zoning district, in Brooklyn. The Premises have approximately 3,200 square feet of lot area, 32 feet of frontage on Moffat Street, 100 feet of depth, and are vacant.

At hearings, the Board expressed various concerns, including that the applicant had not sufficiently articulated a unique physical condition resulting in practical difficulty or unnecessary hardship, a finding required under Z.R. § 72-21(a), or that the proposed building would not alter the

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neighborhood character, a finding required under Z.R. § 72-21(c). Additionally, the Board raised concerns about amount of proposed bulk of the proposed building. The Board further expressed concerns about the various environmental issues which included missing approvals from the city agencies pertaining to hazardous materials, lead, health and safety resulting from the required excavation of underground storage tanks located at the Premises.

In response to the Board’s concerns, the applicant argued that the lot was uniquely narrow and small, was the only vacant lot of its size on the subject block, had been a historically underdeveloped residential site in an M1-1 district, required extensive soil remediation because of the presence of the underground storage tanks, and was located only 30 feet away from the zoning district border with a R6-6 district, which qualified it under Z.R. § 72-21(a). In support of this contention, the applicant provided a uniqueness study which purportedly demonstrated that in the 1,000 feet surrounding the Premises, which includes an R6-6 zoning district and R3-2 zoning district, of the 61 available tax lots, 31 (50 percent) contain a nonconforming residential use and 30 of those lots have less than 32 feet of frontage.

The applicant further represented that there are multiple dwellings across the street from the Premises, and the Premises are approximately 30 feet from an R6-6 zoning district, which purportedly meant that it would not alter the neighborhood character. In support of this contention, the applicant provided photographs and a land use map which show the 13 three-story buildings and one four-story buildings under construction within a 400-foot radius of the Premises. In response to the concerns about bulk of the original building proposed, the applicant reduced the size of proposed building and presented three alternative options with reduced bulk.

The Board, however, remained unconvinced that the applicant had met the necessary findings, and by letter dated August 14, 2020, the applicant requests withdrawal of this application.

*Therefore, it is Resolved*, that this application shall be and hereby is *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, October 5, 2020.

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**2019-7-BZ**

**CEQR #19-BSA-070X**

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** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 8, 2019, acting on DOB Alteration Type II Application No. 220683259, reads in pertinent part:

“ZR 22-10 – Proposed Educational Training is not permitted in R2 district. Special permit from Board of Standards and Appeals is required.”

This is an application under Z.R. §§ 73-121 and 73-03 to permit, on a site located within an R2 zoning district, a university sailing and rowing club, contrary to Z.R. § 22-10.

A public hearing was held on this application on August 13, 2019, after due notice by publication in *The City Record*, with continued hearings on October 29, 2019, February 25, 2020, April 20, 2020, August 11, 2020, and then to decision on October 5, 2020. Community Board 10, the Bronx, recommends approval of this application. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. The Board received four form letters in support of this application.

The Premises are located on the east side of Country Club Road, between Campbell Drive and Polo Place, within an R2 zoning district, in the Bronx. With approximately 104 feet of frontage along Country Club Road, 320 feet of depth, and 28,339 square feet of lot area, the Premises are occupied by three one- to two-story non-residential buildings, 18 parking spaces, and a pier and dock extending into the waters of Eastchester Bay.

The Board has exercised jurisdiction over the Premises since June 22, 1993, when, under BSA Cal. No. 584-91-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit a swimming pool within 500 feet of a lot line, accessory to an existing not-for-profit club, on condition that landscaping be installed and maintained in accordance with BSA-approved plans; fencing and screening be installed and maintained in accordance with BSA-approved plans; the hours of operation of the proposed pool be limited to 10:00 a.m. to 8:00 p.m. to minimize the noise impact on adjacent residential uses; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 72-23.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the

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building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the use is so located as not to impair the character of the surrounding area or its future development as a neighborhood of single-family residences. Specifically, the university use has existed at the Premises for almost 100 years as a form of beach recreation club, and, under the proposed use, will be used under the supervision of Fordham University for its sailing and crew teams. Further, the use of the Premises will principally be seasonal, from September to November and again from March until May for only a few hours of the day, such that the proposed use will be less intensive than the Club's previous use.

The applicant represents that such use is so located as to draw a minimum of vehicular traffic to and through local streets. Specifically, students will travel to and from the Premises by university vans that can carry 8–12 passengers and by doing so minimize the number of cars coming to the site. The existing on-site parking spaces will be adequate to handle both the student practices and any regatta parking, and there will be no parking by the university on the neighborhood streets. Further, no parking or bulk waivers are being requested for the Premises.

The applicant therefore represents that the use will not produce an adverse impact on the privacy, quiet, light, and air in the neighborhood, and will not interfere with any approved or pending public improvement project.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the university use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the university will not interfere with any public improvement project.

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 19BSA070X, dated October 5, 2020. The EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic and Cultural Resources; Urban Design/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.

The applicant submitted a Waterfront Revitalization Program, within the January 22, 2020, draft EAS, relating to the rehabilitation of the dock and on-shore structures to accommodate the university sailing and crew program, committing to a promotion of: commercial and residential redevelopment in areas well-suited to such development; water-dependent and industrial uses in New York City coastal areas that are well-suited to their continued operation; the use of New York City's waterways for commercial and recreational boating and water-dependent transportation; the protection and restoration of the quality and function of ecological systems within the New York City coastal area; protection and improvement of water quality in the New York City coastal area; minimization of loss of life, structures, infrastructure, and natural resources caused by flooding and erosion, and the increase of resilience to future conditions created by climate change; public access to, from, and along New York City's coastal waters; and, the protection of scenic resources that contribute to the visual quality of the New York City coastal area.

By correspondence dated June 29, 2020, the Department of City Planning states that, based on the information submitted, the Waterfront Open Space Division, on behalf of the New York City Coastal Commission, having reviewed the waterfront aspect of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (WRP) policy and determines the project consistent with the WRP policies.

By letter dated December 5, 2018, the New York State Office of Parks, Recreation, and Historic Resources states that the project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

By correspondence dated January 23, 2020, the Landmarks Preservation Commission represents that the proposed project would not result in any potential for significant adverse impacts on historic or cultural resources.

By correspondence dated February 25, 2020, the Department of Environmental Protection states, regarding natural resources, that it the proposed work will be outside of the Spartina area; as long as the disturbance during construction is kept outside of the wetland area, it should be okay and DEP has no further comments. Note about turbidity curtain use: this site proposes using turbidity curtains during construction, and since this location experiences quite a large tidal range, the curtains may or may not work in containing sediments. If the applicant proceeds with using turbidity curtains, they need to be well anchored or else they will float loose and scour the shore with each tide cycle. To proceed with using or not using turbidity curtains will have to be a judgment call the engineer will have to make after assessing the site condition during construction.

By letter dated February 25, 2020, the Department of Environmental Protection states that the September 2018 Phase I report revealed that historical on-site and surrounding area land uses consisted of a variety of

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residential and commercial uses including a club house, residential dwellings, school, boat house, etc. Regulatory databases identified five spills within 1/8-mile; one underground storage tank site and one aboveground storage tank site within ¼-mile; and, 11 leaking storage tank sites within 1/2-mile of the project site. It should be noted that there is one closed spill at the subject property when an unknown petroleum product was spilled. Based on our review of the submitted documentation, we have the following comments and recommendations to BSA: BSA should inform the applicant that based on the historical on-site and/or surrounding area land uses, a Phase II Environmental Site Assessment (Phase II) is necessary to adequately identify/characterize the surface and subsurface soils of the subject property, and to inform and disclose the measures necessary to avoid impacts from hazardous materials. A Phase II Investigation Protocol/Work Plan summarizing the proposed drilling, soil, groundwater, and soil vapor sampling activities should be developed in accordance with the *City Environmental Quality Review Technical Manual* and submitted for DEP review and approval. The Work Plan should include blueprints and/or site plans displaying the current surface grade and sub-grade elevations and a site map depicting the proposed soil, groundwater, and soil vapor sampling locations. Soil and groundwater samples should be collected and analyzed by a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) certified laboratory for the presence of volatile organic compounds (VOCs) by United States Environmental Protection Agency (EPA) Method 8260, semi-volatile organic compounds by EPA Method 8270, pesticides by EPA Method 8081, polychlorinated biphenyls by EPA Method 8082, and Target Analyte List metals (filtered and unfiltered for groundwater samples). The soil vapor sampling should be conducted in accordance with NYSDOH's October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York. The soil vapor samples should be collected and analyzed by a NYSDOH ELAP certified laboratory for the presence of VOCs by EPA Method TO-15. An Investigation Health and Safety Plan (HASP) should also be submitted for DEP review and approval. BSA should also instruct the applicant that the Phase II Work Plan and HASP should be submitted for DEP review and approval prior to the start of any fieldwork.

By letter dated April 6, 2020, the Department of Environmental Protection states that has reviewed the March 2020 Phase II Work Plan (Work Plan) and the March 2020 Health and Safety Plan (HASP) prepared by Laurel Environmental Associates, Ltd. on behalf of Fordham Waterfront Holdings, LLC Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA: Work Plan- BSA should instruct the applicant that the proposed soil, groundwater and soil vapor sampling locations should be individually labeled (e.g., SB-1, GW-1, SV-1, etc.) on Figure 2.0. HASP- BSA should instruct the applicant to include information fact sheets and/or Safety Data Sheets for

potential contaminants of concern (VOCs, SVOCs, pesticides, PCBs and heavy metals). BSA should instruct the applicant to include an accident and injury report form. DEP finds the March 2020 Work Plan and HASP for the proposed project acceptable as long as the aforementioned information is incorporated into the Work Plan and HASP. BSA should inform the applicant that upon completion of the investigation activities, the applicant should submit a detailed Phase II report for DEP review and approval. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil, 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, sampling logs, and remedial recommendations, if warranted.

By letter dated June 19, 2020, the Department of Environmental Protection states that has reviewed the May 2020 Phase II Environmental Site Assessment (Phase II) prepared by Laurel Environmental Geoscience, DPC (Laurel) on behalf of Fordham Waterfront Holdings, LLC. DEP concurs with Laurel's recommendation to clean out the on-site cesspool. BSA should instruct the applicant to submit a site-specific Construction Health and Safety Plan (CHASP) on the basis of possible exposure of both on-site personnel and the surrounding community to contaminants for the proposed construction/renovation project. The CHASP should be submitted for DEP review and approval. Construction/renovation activities should not occur without DEP's written approval of the CHASP.

By letter dated July 24, 2020, the Department of Environmental Protection added that the Montefiore Hutchinson Campus located at 1250 Waters Place is an ambulatory care center and not a hospital; therefore, BSA should instruct the applicant to include a highlighted route to the nearest hospital; and BSA should instruct the applicant to include safety data sheets for potential contaminants of concern. They find the June 2020 CHASP acceptable as long as the aforementioned information is incorporated, and DEP has concluded that with the implementation of the CHASP, the proposed rehabilitation work will be protective of both on-site personnel and the surrounding community. Therefore, DEP has no objection to the issuance of any remaining permits (i.e., Certificate of Occupancy) by the New York City Department of Buildings that is related to this project. On August 4, 2020, the applicant submitted a revised CHASP addressing DEP's comments.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Based on the foregoing, the Board has determined that the evidence in the record supports the requisite findings for

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the special permit pursuant to Z.R. §§ 73-121 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-121 and 73-03 to *permit*, on a site located within an R2 zoning district, the operation of a university sailing and rowing club, contrary to Z.R. § 22-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received September 29, 2020”—six (6) sheets; and *on further condition*:

THAT City, State, and Federal approvals shall be obtained before construction proceeds;

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. 2019-7-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 May 4, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 5, 2020.

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**2019-307-BZ**

**CEQR #20-BSA-053K**

APPLICANT – Sheldon Lobel, P.C., for Havermeyer LLC, owner; Dimerock LLC d/b/a MetroRock Climbing Center, lessee.

SUBJECT – Application December 30, 2019 – Special Permit (§73-36) to permit the operation of a physical culture establishment (MetroROCK) to be located on portions of the cellar and first floors of proposed 23-story mixed-use building contrary to ZR §32-10. C4-3 zoning district located on the same zoning lot with the NYC Designated Landmark “The Dime Savings Bank of Williamsburg.

PREMISES AFFECTED – 277 South 5<sup>th</sup> Street a/k/a 263-279 South 5<sup>th</sup> Street, Block 2447, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 29, 2019, acting on DOB New Building Application No. 321192437, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in a 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.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C4-3 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of a proposed 23-story with cellar mixed-use residential, commercial, and community facility building, contrary to Z.R. § 32-10.

A public hearing was held on this application on August 25, 2020, after due notice by publication in *The City Record*, and then to decision on October 5, 2020.

The Premises are bounded by South Fifth Street to the south, Marcy Avenue to the east, South Fourth Street to the north, and Havemeyer Street to the west, within a C4-3 zoning district, in Brooklyn. With approximately 290 feet of frontage along South Fifth Street, 124 feet of frontage along Marcy Avenue, 164 feet of frontage along South Fourth Street, 103 feet of frontage along Havemeyer Street, and 50,738 square feet of lot area, the Premises are under construction of a proposed 23-story with cellar mixed-use residential, commercial, and community facility building that includes an individual landmark designated by the Landmarks Preservation Commission as “The Dime Savings Bank of Williamsburgh”.

The Board has exercised jurisdiction over the Premises since March 21, 2017, when, under BSA Cal. No. 2016-4244-BZ, the Board granted a special permit, pursuant to Z.R. § 73-44, to permit a reduction in the required number of accessory off-street parking spaces for Use Group 6 offices in parking requirement category B1, contrary to Z.R. § 36-21, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; no certificate of occupancy be issued if the office use in parking requirement category B1 in Use Group 6 is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; the condition be stated on the certificate of occupancy; a certificate of occupancy be obtained within four years, by March 21, 2021; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the

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Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 8,388 square feet of floor area on a portion of the first floor with areas for rock climbing, fitness, lobby, office, and seating; and 1,533 square feet of floor space on the cellar level with locker rooms, restrooms, and an exercise room. The PCE proposes to operate as “MetroROCK,” daily, from 7:00 a.m. to 12:00 a.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be located within the cellar level and first floor of a mixed-use building and will be consistent with the character of the surrounding area, which includes a mix of compatible uses including offices, banks, retail stores, eating and drinking establishments, and other PCEs. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE will be separated by several floors from the closest residential unit, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include sound attenuating flooring in the fitness area with a six-inch-thick rubber mat and acoustic ceiling tiles to prevent sound transmission. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and the PCE will produce no negative impact to the surrounding

area.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated August 21, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) that has been tested and self-certified throughout the Department of Buildings and signed-off. A fire alarm system is also installed but has not been approved. A “Letter of Defect” and a violation order has been issued to make repairs to the system. As per the Temporary Certificate of Occupancy, fire guards are to be provided throughout the Premises, until the fire alarm system has been signed-off by the Fire Department. Based on the foregoing, the Fire Department has no objection to the application. At hearing, the Fire Department added that the fire guard requirement pertains only to residential spaces of the building and not the PCE.

By letter dated February 16, 2018 (LPC-19-22171; NOR-19-22171), the Landmarks Preservation Commission stated no objection to the elimination of the approved one-story penthouse and constructing a stair bulkhead over the north secondary façade; the construction of an open staircase on the existing roof over the secondary north and east façades, connecting the existing building to a new elevator tower located adjacent to the secondary north façade off of the proposed landmark site; the installation of pavers and landscape material on the existing roof surface; the demolition of a portion of the east parapet and the construction of three steps on the existing roof along the length of the east façade to connect to a new building being constructed off of the landmark site; and the creation of an opening at the first floor of the secondary, undeveloped east façade to provide access into the new building being constructed off the landmark site.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-053K, dated October 5, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved,* that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C4-3 zoning district, the operation of a physical culture establishment on portions of the first

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floor and cellar level of a proposed 23-story with cellar mixed use residential, commercial, and community facility building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 22, 2020”—Nine (9) sheets; and *on further condition*:

THAT the Board takes no position on the occupancy load of the Premises and such must comply with the parking reduction granted under BSA Cal. No. 2016-4244-BZ (March 21, 2017);

THAT this grant shall be limited to a term of ten years, expiring October 5, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-307-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 May 4, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 5, 2020.

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## **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**

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 November 9-10, 2020, at 10 A.M., for decision, hearing closed.

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## **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**

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 November 9-10, 2020, at 10 A.M., for decision, hearing closed.

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## **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 28<sup>th</sup> Street, Block 8791, Lot 120, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to November 9-10, 2020, at 10 A.M., for adjourned hearing.

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# MINUTES

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## 2019-191-BZ

APPLICANT – Law Office of Lyra Altman, for Jonathan Weinberger & Zipporah Caroline Weinberger, owners.

SUBJECT – Application July 16, 2019 – 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.

PREMISES AFFECTED – 1485 East 21<sup>st</sup> Street, Block 7657, Lot 16, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 19-20, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-292-BZ

APPLICANT – The Law Office of Vincent L. Petraro, PLLC., for Epic Tower LLC, owner.

SUBJECT – Application November 8, 2019 – 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.

PREMISES AFFECTED – 41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of Queens.

### COMMUNITY BOARD # 7Q

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for adjourned hearing.

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## REGULAR MEETING MONDAY-TUESDAY AFTERNOON OCTOBER 5-6, 2020, 2:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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### ZONING CALENDAR

## 2020-18-BZ

APPLICANT – Eric Palatnik, P.C., for Albert Hasson, owner

SUBJECT – Application February 21, 2020 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area). R3-1 zoning district.

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 19-20, 2020, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 105, Nos. 41-42

October 30, 2020

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### DIRECTORY

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**2020-78-A**

90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082, Borough of **Staten Island, Community Board: 1**. Common Law Vesting to allow for the reinstatement of alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations. R3A district.

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**2020-79-A**

90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082, Borough of **Staten Island, Community Board: 1**. Common Law Vesting to allow for the reinstatement of alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations. R3A district.

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**2020-80-BZ**

459 Lexington Avenue, Block 1300, Lot(s) 0023, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Spa 45) contrary to ZR §32-10. C5-3 Special Midtown Purpose District C5-3 district.

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**2020-81-BZ**

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**2020-82-A**

51 Cortlandt Street, Block 01039, Lot(s) 0039, Borough of **Staten Island, Community Board: 1**. Proposed development of a one (1) family dwelling partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district. R3A district.

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**2020-83-A**

53 Cortlandt Street, Block 01039, Lot(s) 0037, Borough of **Staten Island, Community Board: 1**. Proposed development of a one (1) family dwelling partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district. R3A district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**DECEMBER 14-15, 2020. 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, December 14, 2020, at 10:00 A.M. and 2:00 P.M., and Tuesday December 15, 2020, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.  
SUBJECT – Application September 4, 2020 – Extension of time to obtain a Certificate of Occupancy of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (Carriage House) with incidental painting and spraying which expired on October 30, 2019; Waiver of the Board's Rules of Practice and Procedures. C2-2/R4 zoning district.

PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

**COMMUNITY BOARD #8Q**

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### 85-10-BZ

APPLICANT – Akerman LLP, for DG Fordham, LLC, owner; Fordham Fitness Group, LLC, lessee.

SUBJECT – Application February 4, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expired on February 1, 2020. C4-4 zoning district.

PREMISES AFFECTED – 309-311 East Fordham Road, Block 3154, Lot 94, Borough of Bronx.

**COMMUNITY BOARD #7BX**

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### 189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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### 2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application February 3, 2020 – Extension of Time to Obtain a Certificate of Occupancy. M1-2/R6B zoning district.

PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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## APPEALS CALENDAR

### 2019-176-A

APPLICANT – Rosenberge & Estis, P.C., for Union Temple of Brooklyn, owner.

SUBJECT – Application June 18, 2019 – Appeal of a New York City Department of Buildings determination dated May 21, 2019, that musical and spoken word events held in the Temple's sanctuary and ballroom are not "accessory use". R8X zoning district.

PREMISES AFFECTED – 17 Eastern Parkway, Block 1172, Lot 6163, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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## ZONING CALENDAR

### 2020-12-BZ

APPLICANT – Law Office of Jay Goldstein, for Freewythe LLC, owner; Viking Panda LLC d/b/a Row House, lessee.

SUBJECT – Application February 19, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Row House Williamsburg) located in the cellar and a portion of the first floor of an existing building contrary to ZR §42-10. M1-4/R6-A & MX-8 zoning districts.

PREMISES AFFECTED – 356 Wythe Avenue (354-360 Wythe Avenue, 45-51 South 3 Street, 60-62 South 2 Street), Block 2415, Lot(s) 22, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### 2020-33-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner; Blink 88<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 437 88<sup>th</sup> Street, Block 6050, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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# CALENDAR

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**2020-72-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, for LTF Club Operations, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district.

PREMISES AFFECTED – 85 Jay Street, Block 54, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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*Margery Perlmutter, Chair/Commissioner*

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
OCTOBER 19-20, 2020, 10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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**SPECIAL ORDER 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**

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M. for adjourned hearing.

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**122-95-BZ**

APPLICANT – Capell Barnett Matalon & Schoenfeld LLC, for 152-65 Realty Company LLC, owner.

SUBJECT – Application October 1, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted a warehouse (UG 16) and trucking terminal (UG 17) with accessory offices, loading and unloading contrary to use regulations which expired on July 11, 2016; Amendment to permit a change in the hours of operation and a request to eliminate the term. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 152-65 Rockaway Boulevard, Block 12278, Lot 60, Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

-----  
**42-97-BZ**

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

**COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

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**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 – 76-36 164<sup>th</sup> Street, Block 6848, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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**125-97-BZ**

APPLICANT – Gerald J. Caliendo, AIA, for Renato Devincenzi, Carranza Italy Inc., owner; 61-01 Woodhaven Boulevard Assoc. LLC., lessee.

SUBJECT – Application March 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of an of a one-story and cellar retail (UG 6) building with accessory parking for 21 vehicles which expired on March 10, 2018; Waiver of the Board Rules of Practice and Procedures. R7A & R4 zoning districts

PREMISES AFFECTED – 61-01 Alderton Street, Block 3101, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M. for continued hearing.

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**195-02-BZ**

APPLICANT – Pryor Cashman LLP, for McDonald’s Corporation, owner.

SUBJECT – Application September 4, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility which expires on November 23, 2023; Amendment to permit an enlargement; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, Block 4471, Lot 21, Borough of Brooklyn.

# MINUTES

## COMMUNITY BOARD #5BK

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for adjourned hearing.

### 120-13-BZ

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, owner.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M. for continued hearing.

### 193-13-BZ

APPLICANT – Eric Palatnik, P.C., for Centers FC Realty, LLC, owner.

SUBJECT – Application February 21, 2020 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-44) to permitting the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 6 office space which expired on January 22, 2020. C2-2/R6A and R5 zoning district.

PREMISES AFFECTED – 4770 White Plains Road, Block 5114, Lot 14, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to January 25-26, 2021, at 10 A.M. for deferred decision.

## APPEALS CALENDAR

### 2019-82-A

APPLICANT – Eric Palatnik, P.C., for Ralph Notaro, owner.

SUBJECT – Application April 2, 2019 – 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 district.

PREMISES AFFECTED – 430 St. Marks Place, Block 16, Lot 120, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0  
THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 2, 2019, acting on New Building Application No. 520360804, reads in pertinent part:

1. GCL 35: Proposed new building within the bed of a mapped street is contrary to ARTICLE III, Section 35 of the general city law. Therefore, obtain Board of Standards and Appeals Approval.
2. ZR 23-30: No bulk regulations are required for proposed new building within of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to ZR 72-01(g).

This is an application under General City Law § 35 and Z.R. § 72-01(g) to permit construction within the bed of a mapped, but unimproved, street.

A public hearing was held on these applications on March 3, 2020, after due notice by publication in *The City Record*, with continued hearings on May 18, 2020, and October 6, 2020, and then to decision on October 19, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 1, Staten Island, recommends approval of this application.

The Premises are located on the west side of Saint Marks Place, between Hyatt Street and Victory Boulevard Extension, within the Special St. George District and Upland Subdistrict, in a C4-2 zoning district, on Staten Island. The Premises would have approximately 50 feet of frontage along Saint Marks Place, a depth of 85 feet, and 4,243 square feet of lot area, and are currently vacant.

The applicant proposes to construct a new five-story, mixed-use commercial and residential building. The proposed building would be partially located in the bed of a mapped but unbuilt portion of Victory Boulevard Extension, for which the applicant requests the General City Law § 35 waiver. The applicant further represents that the building has been designed in context with the established character of the neighborhood and notes that it is not requesting any waivers for bulk because the proposed building would comply with the bulk requirements of the underlying C4-2 zoning district and the regulations of the St. George Special District and Upland Subdistrict.

The applicant also represents that a Builders Pavement Plan (“BPP”), proposing to construct, to the front of the building, a new three-inch asphaltic concrete topping mill; a new full width concrete sidewalk to replace the existing sidewalk; a new steel faced concrete curb; a new 17” S/F concrete curb cut/apron; and a new 1/4” expansion joint with premolded neoprene filler and elastometric sealant, was filed with the New York City Department of Buildings.

The Board notes that, pursuant to General City Law § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements. The Board notes that the bulk waivers proposed shall only be as necessary to address non-compliance resulting from the

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# MINUTES

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location of the.. development within and outside the unimproved streets, 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.

Over the course of the hearings, the Board requested the applicant provide an as-of-right plans to demonstrate why no construction in the bed of the mapped street is not feasible; expand on what effect this new development would have on the prevailing built character of the block and the neighbors; and discuss how the development would comply with the Special District requirements and underlying C4-2 zoning district requirements.

In response, the applicant presents an as-of-right plan and states that such a development would create financial hardship as almost all of the lot is located within the mapped bed of Victory Boulevard Extension. The applicant further stated that all of the proposed building would be built in the mapped street, as the proposed Victory Boulevard runs directly through the lot. Furthermore, the applicant provides a land use map to illustrate the prevailing built character of the block and neighbors which is predominantly comprised of commercial uses, public facilities, and multi-family residences.

Additionally, the applicant provided revised plans which demonstrate that the proposed building includes security gates where applicable, enhancements with the necessary transparency requirements, and mandatory improvements as per the Special St. George District and Upland Subdistrict Special Rules. These plans also demonstrate that the proposed building complies with the C4-2 zoning district in which the maximum street wall height is 60'-0" or six stories, a maximum building height of 70'-0", a maximum total floor area and commercial floor area of 14,426 square feet, a maximum residential floor area of 9,334 square feet, a maximum lot coverage area of 2,790 square feet, a lot coverage ratio of 0.70, and a rear yard with a minimum depth of 20'-0". The proposed building would have a street wall height of 45'-0" or four stories, a building height of 52'-0", a total floor area of 10,619 square feet, a commercial floor area of 1,297, a residential floor area of 9,322 square feet, a lot coverage area of 2,404 square feet, a lot coverage ratio of 0.56, and a rear yard depth of 20'-0".

By correspondence dated May 18, 2020, the Fire Department states that it has reviewed the plans and notes and that applications will be filed with the Department of Buildings for a new standpipe and sprinkler system. A fire hydrant is located directly in front of the proposed building. Based upon the foregoing, the Fire Department has no objection to this application.

By letter dated June 18, 2019, the Department of Environmental Protection states that there are no existing sewers or water mains at the subject site. The lot is fronting on an existing 20" diameter combined sewer and 12" diameter City water main in Saint Marks Place. The Drainage Plan shows two 10" diameter sanitary and 12" diameter storm sewers in the bed of the Victory Boulevard Extension between Montgomery Avenue and Saint Marks Place. The latest tax map as per the Department of Finance

shows Victory Boulevard Extension is the mapped street and is not open at the subject site. The City does not have title to Saint Marks Place. In addition, the properties that would benefit from the future sewers in the bed of Victory Boulevard Extension (Lot Nos. 119, 120, 122, 123 & 124) are also fronting an existing 30" x 20" combined sewer in Saint Marks Place. Based on the above, the Department of Environmental Protection has no objections to the proposed application.

By letter dated October 5, 2020, the Department of Transportation ("DOT") states that the improvement of Victory Boulevard Extension at this location, which would involve the taking of a portion of the applicant's property, is not presently included in DOT's Capital Improvement Program, but this does not preclude a change in the program in the future.

Based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, under the powers vested in the Board by Section 35 of the General City Law, to *permit* construction within the bed of a mapped, but unimproved, street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received September 16, 2020"- Sixteen (16) sheets; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-82-A"), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York, resulting from an outbreak of novel coronavirus disease, by May 20, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 19, 2020.

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# MINUTES

## 2020-46-A

APPLICANT – Deirdre A. Carson, Esq., for 1248 Associates LLC (c/o Hidrock Properties), owner.

SUBJECT – Application May 26, 2020 – Extension of Time to Complete Construction of a new building on the site as a new temporary certificate of occupancy for the entire building may not be obtained by January 31, 2021.

PREMISES AFFECTED – 12-14 East 48<sup>th</sup> Street, Block 1283, Lot 11, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 121190816 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on October 6, 2020, after due notice by publication in *The City Record*, and then to decision on October 19, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

#### I.

The Premises are 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. With approximately 50 feet of frontage along East 48th Street, 25 feet of frontage along East 47th Street, 201 feet of depth, and 7,532 square feet of lot area, they are to be occupied by a 29- story commercial building used as a transient hotel (the “Hotel Building”).

On January 20, 2017, the Department of Buildings determined that the Hotel Building would comply with all applicable zoning regulations and issued building permits authorizing work associated with the New Building Application beginning in January 2017 and culminating in the issuance of a new-building permit on July 20, 2017. By letter dated September 29, 2020, the Department of Buildings represents that building permits associated with the New Building Application were lawfully issued.

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* Z.R. § 81-621.

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 have automatically lapsed, Z.R. § 81-621.

However, on December 10, 2019, the Board granted an application, under Z.R. § 81-621, to establish the right to continue construction of a building containing a transient hotel and to renew building permits associated with the New Building Application for one year, expiring January 31, 2021.

With this deadline drawing near and to avoid unnecessary interruption in construction should a temporary certificate of occupancy not be obtained in time, the applicant seeks to establish the right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the New Building Application for four years.

#### II.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”).

Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

#### A.

First, as noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Hotel Building in accordance with the New Building Application before the Effective Date.

#### B.

Second, the applicant submitted evidence that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

In particular, the applicant submits that construction has already progressed to the point where the entire superstructure of the Hotel Building has been constructed, the hoistway has been removed, the Hotel Building has been enclosed, and exterior façade panels have been placed. Plumbing work is substantially complete; the HVAC system and other supporting infrastructure have been substantially installed; and the framing and drywall have been installed.

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# MINUTES

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Work required to complete construction is primarily detail or finish work for the hotel rooms along with some exterior and mechanical work.

With the above work in place, construction has progressed to the point of completing 1,138 days out of a total 1,380 days (82.5 percent).

Accordingly, the record reflects that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

### C.

Third, the applicant submitted evidence that, by September 2019, substantial expenses had been incurred, totaling approximately \$45.8 million (83 percent) of the total hard costs of \$54.8 million along with \$29.2 million in soft costs, \$18 million in irrevocable contractual commitments, and \$94 million in obligations should the owner be unable to repay its loans.

Since that time, hard costs expended have reached \$53.7 million (92.8 percent of the budgeted hard costs of construction), and soft costs expended have risen to \$40.2 million.

Accordingly, the record reflects that the owner has incurred substantial expenses to further development of the Hotel Building.

### D.

Fourth, the applicant submitted evidence that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss—that is, substantial economic harm.

In particular, the applicant submits that redesigning the nearly completed Hotel Building into an office building would require a three-year delay, and would require redesigning and rebuilding the Hotel Building's interiors and systems. Additionally, the owner could be subject to \$18 million in liability based on the loss of opportunity to earn future profit from the sale of timeshares and subsequent operation of the Hotel Building, and the owner would be unable to repay principal and accrued interest totaling \$91.1 million on outstanding loans. Lastly, many expenses incurred are specific to the Hotel Building, including \$5 million in furniture, fixtures, and equipment.

Because of the substantial nature of the financial losses pertaining to redesigning the nearly completed 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.

Accordingly, the record reflects that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

### III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and that the applicant

has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Nothing herein shall inhibit any tolling applicable by virtue of any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to *establish* the right to continue construction and to *renew* building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 121190816, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment August 9, 2017, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, expiring May 18, 2025, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, October 19, 2020.

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**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 February 8-9, 2021, at 10 A.M. for continued hearing.

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**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 14-15, 2020, at 10 A.M. for deferred decision.

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**2019-68-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Kings Loop Realty LLC, owner.

SUBJECT – Application March 29, 2019 – Proposed construction of a one-story warehouse building (UG 16) on site not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond.

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to January 25-26, 2021, at 10 A.M. for adjourned hearing.  
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**2019-195-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CAM LLC, owner.

SUBJECT – Application July 22, 2019 – Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 191 Industrial Loop, Block 7206, Lot 299, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to January 25-26, 2021, at 10 A.M. for adjourned hearing.  
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**2019-276-A**

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.  
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**2019-282-A thru 2019-291-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cord Meyer Development, owner.

SUBJECT – Application November 8, 2019 – Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district.

PREMISES AFFECTED – 18-26 to 18-50 Bay Lane, Block 5872, Lot 102, Borough of Queens.

**COMMUNITY BOARD #7Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for decision, hearing closed.  
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## ZONING CALENDAR

**CORRECTION: This resolution adopted on October 19, 2020, under Calendar No. 2019-191-BZ, is hereby corrected to read as follows:**

**2019-191-BZ**

**CEQR #20-BSA-006K**

APPLICANT – Law Office of Lyra Altman, for Jonathan Weinberger & Zipporah Caroline Weinberger, owners.

SUBJECT – Application July 16, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (FAR and open space ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1485 East 21<sup>st</sup> Street, Block 7657, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 17, 2019, acting on Alteration Type 1 Application No. 321754534, 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.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing single-family, one-story with cellar detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio, and rear yard, contrary to Z.R. §§ 23-141 and 23-47.

A public hearing was held on this application on July 14, 2020 after due notice by publication in *The City Record*, with a continued hearing on October 6, 2020, and then to decision on October 19, 2020. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood. Community Board 14, Brooklyn,

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recommends approval of this application. The Board also received two form letters in support of this application.

The Premises are located on the east side of East 21st Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn. With approximately 70 feet of frontage along East 21st Street, 100 feet of depth, and 7,000 square feet of lot area, the Premises are occupied by an existing one-story with cellar, single-family, detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a one-story with cellar single-family, detached building with 1,962.8 square feet of floor area, (0.28 FAR), open space ratio of 256%, a front yard a depth of 20'-0", a rear yard with a depth of 32'-0", a northern side yard with a width of 13'-10"-13/16" a southern side yard with a width of 15'-0", and a total height of 21'-7-1/16". The applicant requests an enlargement to the residence's floor area by adding an extension to the northern side yard and a one-story addition to a portion of the rear of the residence as well as the addition of a second floor and an attic. The proposed building will have a floor area of 6,172.58 square feet (0.88 FAR), an open space ratio of 74%, a front yard with a depth of 20'-0", a rear yard with a depth of 27'-0" at the first floor and 32'-0" at the second floor and above, a northern side yard measuring 5'-0", a southern side yard measuring 15'-0", and a total height of 35'-0".

At the Premises, a maximum of .50 FAR (3,500 square feet of floor area) is permitted, a minimum of 150% open space ratio is required, and a rear yard with a minimum depth of 30'-0" is required, pursuant to Z.R. §§ 23-141 and 23-47.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that, of the 75 qualifying residences, 66 (88 percent) have an OSR of 150% or less, and 16 residences (21 percent) have an OSR of 74 percent or less. Within the Study Area, 62 of the qualifying residences (82 percent) have an FAR of 0.5 or greater, and 9 residences (12 percent) have an FAR of 0.88 or greater. The applicant submitted a rear yard study demonstrating that, on the subject block of East 21st Street and the adjacent block of East 22nd Street, of the 30 qualifying residences, 20 (67 percent) have a rear yard measuring 27'-0" or less. The applicant provided photographs and drawings of the streetscape near the residence and represents that the as-built condition will be in context with the subject social block.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA006K, dated October 19, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing one-story, single-family, detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "April 30, 2020"-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum FAR of 0.88 (6,172.58 square feet of floor area), a minimum open space ratio of 74%, and a rear yard with a minimum depth of 27'-□" at the first floor and 32'-0" at the second floor and 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. 2019-191-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 May 19, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 19, 2020.

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## 2020-18-BZ

APPLICANT – Eric Palatnik, P.C., for Albert Hasson, owner

SUBJECT – Application February 21, 2020 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area). R3-1 zoning district.

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application denied.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 23, 2020, acting on Alteration Application No. 321126483, reads in pertinent part:

“Proposed increase in floor area is contrary to Zoning Resolution Section 23-142 in that the proposed Floor Area Ratio exceeds the maximum permitted and requires a special permit from the BSA pursuant to ZR section 73-622.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the construction and enlargement of a single-family residence that does not comply with zoning regulations for floor area ratio (“FAR”), contrary to Z.R. § 23-142.

A public hearing was held on this application on October 6, 2020 after due notice by publication in *The City Record*, and then to decision on October 19, 2020. Community Board 15, Brooklyn, recommends approval of this application. The Board received ten form letters, and one letter from a New York City Council Member, in support of this application. The Board also received one letter in opposition to this application from a neighborhood community group stating that this application is inappropriate because it proposes to construct a new residence and not enlarge an existing residence.

The Premises are located on the southwest corner of Shore Boulevard and Hastings Street, in an R3-1 zoning district, in Brooklyn. With approximately 116 feet of frontage along Shore Boulevard, 85 feet of frontage along Hastings Street, and 11,366 square feet of lot area, the Premises are under construction and occupied by an unenclosed two-story concrete block wall structure.

The Board had exercised jurisdiction over the Premises

since February 28, 2017, when, under BSA Cal. No. 2016-1211-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-622 and 73-03, to permit the proposed enlargement of a single-family detached residence that does not comply with the zoning requirement for floor area ratio, contrary to Z.R. § 23-142, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the maximum floor area of the building be 9,529 square feet (0.84 FAR), as illustrated on the BSA-approved plans; the removal of any existing exterior walls indicated to remain on the BSA-approved plans shall void the special permit; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the special relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

On June 11, 2019, under BSA Cal. No. 2016-1211-BZ, the Board commenced a compliance hearing. In so doing, the Board considered evidence in the record that included photographs and personal inspections by a commissioner and the Board’s compliance officer as well as admissions on behalf of the applicant, and the Board found that the complete demolition of the existing residence had occurred. Because of this demolition, the applicant explicitly violated the Board’s condition that removal of any existing exterior walls indicated to remain on the BSA-approved plans would void the special permit. Accordingly, the Board revoked the special permit.

The Board may only allow the enlargement of an existing single- or two-family detached or semi-detached residence under Z.R. § 73-622.

However, the applicant seeks the Board’s approval to allow the construction of a new residence that exceeds underlying bulk parameters, and argues that the special permit should be available to enlarge a proposed as-of-right building that does not exist.

Because of the complete demolition discussed above, there is only an unenclosed concrete block wall structure at the Premises, which does not meet the Zoning Resolution’s definition “building.” See Z.R. § 12-10. Among other things, a “building” must “have one or more floors and a roof,” but the wall structure standing at the Premises does not. *Id.*

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the Premises are not occupied by an existing single-family residence and, as such, the threshold requirement for this special permit, that there be an existing single- or two-family detached or semi-detached residence to enlarge, has not been met.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *deny* the application.

Adopted by the Board of Standards and Appeals, October 19, 2020.

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## 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 14<sup>th</sup> Avenue (1372-1384 62<sup>nd</sup> St., 1370 62<sup>nd</sup> St, 6210 14<sup>th</sup> Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M. for continued hearing.

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## 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 46<sup>th</sup> Road, Block 48, Lot 8, Borough of Queens.

### COMMUNITY BOARD #2Q

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 November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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## 2018-66-BZ

APPLICANT – Sheldon Lobel, P.C., for 118 West 72<sup>nd</sup> 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 72<sup>nd</sup> Street, Block 1143, Lot 39, 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 November 30, 2020, at 10 A.M., for decision, hearing closed.

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## 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for decision, hearing closed.

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## 2019-35-BZ

APPLICANT – Eric Palatnik, P.C. for Leonid Berlinkov, owner.

SUBJECT – Application February 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area requirements (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 235 Beaumont Street, Block 8740, Lot 0087, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M. for continued hearing.

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## 2019-171-BZ

APPLICANT – Eric Palatnik, P.C., for 1610 Eastchester Road LLC, owner.

SUBJECT – Application June 11, 2019 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R6 and M1-1 zoning districts.

PREMISES AFFECTED – 1610 Eastchester Road aka 1490 Williamsbridge Road, Block 4081, Lot 4, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to March 22-23, 2021, at 10 A.M. for adjourned hearing.

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# MINUTES

## 2019-201-BZ

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corp., owner; Les Fitness LLC DBA Willy B CrossFit, lessee.

SUBJECT – Application August 2, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*Willy B CrossFit*) located in the cellar of an existing two-story building contrary to ZR §31-10. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, Block 306, Lot 22, Borough of Manhattan.

### COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-263-BZ

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M. for adjourned hearing.

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## 2019-298-BZ

APPLICANT – Sheldon Lobel, P.C., for Milt Holdings LLC, owner.

SUBJECT – Application November 27, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Washington Heights and Inwood Music Community Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 506 West 181<sup>st</sup> Street, Block 2152, Lot 72, Borough of Manhattan.

### COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M. for continued hearing.

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## REGULAR MEETING MONDAY-TUESDAY AFTERNOON OCTOBER 19-20, 2020, 2:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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## ZONING CALENDAR

### 2018-124-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for Beacway Operating LLC, owner; Flywheel sports, lessee.  
SUBJECT – Application July 26, 2020 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Flywheel Sports*) to be in a portion of the cellar of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District, NYC Designated Interior Landmark Building.

PREMISES AFFECTED – 2130 Broadway aka 304-314 Amsterdam Avenue, 2124-2134 Broadway, 200-216 W75 Street, Block 1166, Lot(s) 35, 135, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M. for postponed hearing.

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### 2019-225-BZ thru 2019-253-BZ

APPLICANT – Philip L. Rampulla, AIA, for Tora Development, owner.

SUBJECT – Application August 29, 2019 – Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district.

PREMISES AFFECTED – 70-114 Tennyson Drive, 348-370 Nelson Avenue, 6-50 Fitzgerald Avenue, Block 5212, Lot 37, Borough of Staten Island.

### COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for decision, hearing closed.

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### 2020-13-BZ

APPLICANT – Law Office of Jay Goldstein, for 71 Smith Street Property Owner, LLC; Giles Endurance, LLC d/b/a F45, lessee.

SUBJECT – Application January 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-1 zoning district.

PREMISES AFFECTED – 71 Smith Street (140

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# MINUTES

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Schermerhorn Street, 263-265 State Street), Block 170, Lot 7501, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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**2020-20-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Young Golf LLC (d/b/a SSWING) owner.

SUBJECT – Application March 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (SSWING) to be located on a portion of the first floor of an existing 45-story commercial building contrary to ZR §32-10. C5-3 (MID) zoning district.

PREMISES AFFECTED – 245 Park Avenue, Block 1301, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #1M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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**2020-31-BZ**

APPLICANT – Akerman LLP, for John Hancock Life Insurance Co., owner.

SUBJECT – Application April 7, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Orangetheory Fitness*) to be located on a portion of the first floor of an existing building contrary to ZR §32-10. C6-5 Special Lower Manhattan Purpose District.

PREMISES AFFECTED – 100 William Street, Block 68, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD # 1M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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**2020-61-BZ**

APPLICANT – Sheldon Lobel, P.C., for East Harlem HS LLC, owner; East Harlem Scholars Academy Charter School, lessee.

SUBJECT – Application July 21, 2020 – Variance (§72-21) to permit the development of a school (UG 3) (*East Harlem Scholars Academy Charter School*) contrary to underlying bulk requirements. R7A, C2-5/R8A zoning districts.

PREMISES AFFECTED – 342-346 East 104<sup>th</sup> Street, Block 1675, Lot(s) 30, 31, 32, 33, Borough of Manhattan.

**COMMUNITY BOARD #11M**

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M. for continued hearing.

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*Carlo Costanza, Executive Director*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 105, Nos. 43-45

November 20, 2020

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# DOCKETS

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**2020-84-BZ**

161 Emerson Place, Block 1909, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area and density. Special Permit (§73-623) seeking waivers of height, setback, rear yard, and court regulations for a Quality Housing Building. R6 zoning district. R6 district.  
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**2020-85-BZ**

114 Kingsland Avenue, Block 2840, Lot(s) 0003, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit the development of a four (4) story, eight (8) unit residential building contrary to ZR §42-10. M1-1 zoning district. M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**JANUARY 11-12, 2021, 10:00 A.M. & 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, January 11, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday January 12, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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**SPECIAL ORDER CALENDAR**

**5-98-BZ**

APPLICANT – Heywood Blaufeux, for Priority Landscaping Inc., owner.

SUBJECT – Application December 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board's Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**294-99-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 821 Fifth Avenue Investors IV LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application December 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox) which expires on May 9, 2020. C5-2.5 and C5-3 Midtown Special Purpose District – Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 521 5<sup>th</sup> Avenue, Block 1278, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**128-00-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Roza 14W LLC, owner; Equinox Wall Street, Inc., lessee.

SUBJECT – Application March 11, 2020 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expires on September 12, 2020. C5-5(LM) zoning district. Individual Landmark Building.

PREMISES AFFECTED – 14 Wall Street, Block 46, Lot 9, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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## APPEALS CALENDAR

**2020-47-A**

APPLICANT – Law Office of Jay Goldstein, for Miles Davis, owner.

SUBJECT – Application June 8, 2020 – Application filed pursuant to General City Law (“GCL”) 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R3-1 zoning district.

PREMISES AFFECTED – 4810 Beach 48<sup>th</sup> Street, Block 7035, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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## ZONING CALENDAR

**2018-26-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Ivan Duque, owner.

SUBJECT – Application February 21, 2018 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing contrary to ZR §32-21. C2-2/R5 zoning district.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

**COMMUNITY BOARD #3Q**

-----

**2019-95-BZ**

APPLICANT – Slater & Beckerman, P.C., for Caspcar III LLC, owner.

SUBJECT – Application May 15, 2019 – Variance (§72-21) to permit the construction of a six-story mixed-use building with conforming commercial use on the ground floor and residential uses on the upper floors contrary to ZR §32-10. C8-2 zoning district.

PREMISES AFFECTED – 19 Maspeth Avenue aka 220 Conselyea Street, Block 2893, Lot(s) 1 & 59, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**2019-173-BZ**

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

**COMMUNITY BOARD #8Q**

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# CALENDAR

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**2020-73-BZ**

APPLICANT – Sheldon Lobel, P.C., for Lampros Mournouris, as Trustee, South Bronx Charter School for International Cultures and the Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

**COMMUNITY BOARD #2BX**

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*Margery Perlmutter, Chair/Commissioner*

# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
November 9-10, 2020, 10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

**SPECIAL ORDER CALENDAR**

**141-66-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application May 13, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010; Extension of Time to Obtain a Certificate of Occupancy. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9<sup>th</sup> Street, Block 450, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the operation of Use Group (“UG”) 8 motor vehicle storage facility and expired on July 1, 2020, and an extension of time to obtain a certificate of occupancy.

A public hearing was held on this application on October 5, 2020, after due notice by publication in *The City Record*, and then to decision on November 9, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 3, Manhattan, recommends approval of this application.

The Premises are located on the south side of East 9th Street, between First Avenue and Second Avenue, within a R8B zoning district, in Manhattan. The Premises have approximately 25 feet of frontage along East 9th, 85 feet of depth, 2,125 square feet of lot area,

and are currently occupied by an existing one-story commercial building used as a motor vehicle storage facility. The Board has exercised jurisdiction over the Premises since May 24, 1966, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the erection of a one-story building for use as a garage, with the sale of used cars and parking in the open area for a term of ten years, to expire on May 24, 1976, on condition that any and all work substantially conform to drawings as filed with the application; any lights

used in the open area be directed on the lot itself and away from the neighborhood; signs used on the Premises be limited to a total area of 50 square feet; all laws, rules, and regulations applicable be complied with, permit obtained, work done, and certificate of occupancy obtained within one year from the date of the resolution, by May 24, 1976.

On July 1, 1980, under the subject calendar number, the Board amended the resolution to grant an extension of term for ten years from the date of the amended resolution, to expire on July 1, 1990, on condition that the barbed wire be removed from the fence; the signs comply with the C1 district regulation; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by July 1, 1981.

On January 20, 1993, under the subject calendar number, the Board further amended the resolution to grant an extension of term for ten years, to expire on July 1, 2000, on condition that the Premises be maintained in substantial compliance with the existing conditions drawings submitted with the application; other than as amended the resolution be complied with in all respects; a new certificate of occupancy be obtained within one year from the date of the amended resolution, by January 20, 1994.

On October 31, 2000, under the subject calendar number, the Board further amended the resolution to grant an extension of term for ten years to expire on July 1, 2010 on condition that the Premises be maintained in substantial compliance with the existing conditions drawings submitted with the application; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year of the date of the amended resolution, by October 31, 2001.

On February 14, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to grant an extension of term for ten years, to expire on July 1, 2020, and to permit an enlargement of the previously approved building on condition that all use and operation substantially conform to plans filed with the application; the above condition be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect and be listed on the certificate of occupancy; the Department of Buildings ensure compliance with all accessibility requirements; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension.

The applicant represents that the Premises continues to operate as “Rising Wolf Motorcycle Parking Garage” and would continue to operate 24 hours a day, seven days a week. The applicant submits that all conditions of the

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# MINUTES

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Board's grant have been complied with.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amends* the resolution, dated May 24, 1966, as amended through February 14, 2012, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years to expire on July 1, 2030, to grant an extension of time to obtain a certificate of occupancy to May 19, 2022; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received October 21, 2020'-Two (2) sheets; and *on further condition*:

THAT signage on the site shall comply with C1 district regulations;

THAT any lights used in the open area shall be directed on the lot itself and away from the neighborhood;

THAT the fenced areas on the Premises shall be kept free of barbed wire;

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. 141-66-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 May 19, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 9, 2020.

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**CORRECTION: This resolution adopted on November 9, 2020, under Calendar No. 313-77-BZ, is hereby corrected to read as follows:**

## **313-77-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Gilsey House, Inc., owner.

SUBJECT – Application February 21, 2020 – 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. M1-6 zoning district. Gilsey House Individual Landmark.

PREMISES AFFECTED – 1200 Broadway and 17-27 West 29<sup>th</sup> Street, Block 831, Lot 20, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application to reopen and amend a variance, previously granted by the Board, which permitted the conversion and enlargement of an eight-story with penthouse building from manufacturing into residential use, to facilitate the transfer of 29,328.68 square feet of unused development rights appurtenant to the Premises.

A public hearing was held on this application on October 5, 2020, after due notice by publication in *The City Record*, and then to decision on November 9, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 5, Manhattan, opposes this application and questions whether the underlying variance findings would be disturbed, specifically with respect to Z.R. § 72-21(c) and (e), in that the proposed amendment would alter the character of the neighborhood and would provide the applicant with more than the minimum relief necessary. The Board received two letters in support of this application, including one from a New York City Council member.

The Premises are located on the northeast corner of Broadway and West 29<sup>th</sup> Street, within an M1-6 zoning district, in Manhattan. With approximately 65 feet of frontage along Broadway, 149 feet of frontage along West 29<sup>th</sup> Street, and 13,894 square feet of lot area, the Premises are occupied by an existing eight-story, with cellar, penthouse, and mezzanine levels, residential building.

The Board has exercised jurisdiction over the Premises since December 13, 1977, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the conversion of an eight-story with duplex penthouse building from manufacturing to residential occupancy on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; a wet sprinkler system be installed and maintained throughout the Premises; a rate of rise system be

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# MINUTES

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installed and maintained with a central office connection; an approved rate of rise device be connected in each apartment and be connected to a fire alarm device in the public hall on each floor; there be no living or sleeping quarters in the cellar; all laws, rules and regulations applicable be complied with, and substantial construction be completed within one year.

On July 10, 2012, under the subject calendar number, the Board amended the resolution to permit the construction of a one-story penthouse and roof deck enlargement within the approved envelope 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 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.

Now, the applicant seeks an amendment to facilitate the transfer of unused development rights and to reflect minor variations to the existing building floor area as follows: (i) increased floor area in the 1st and 2nd floor mezzanines; (ii) significantly reduced floor area for the 3rd floor mezzanine; and (iii) the smaller size of the 9th floor lower penthouse, and the lack of any upper penthouse. While the Board approved a total of 112,579.14 square feet of zoning floor area in 1977, today, the zoning floor area totals an estimated 108,610.48 square feet.

The applicant states that the proposed transfer of unused development rights is consistent with *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), which recognizes the Board's authority to review of requests for the transfer of development rights from sites subject to Board jurisdiction. The applicant represents that the transfer of the unused development rights from the Premises would not undermine any of the Board's findings under Z.R. § 72-21. With regards to the as-built conditions, the applicant submits that the building was underbuilt by approximately 30,239 square feet.

The applicant notes that the Board made all of the findings required pursuant to Z.R. § 72-21 in approving the Variance. Accordingly, the applicant states that the excess floor area did not have any marketable value at the time of the original variance grant in 1977 and submitted a statement from a financial consultant stating that the remaining development rights were usable only for conforming commercial and manufacturing uses. Further, combined impacts of high interest rates and high inflation with the City's then-fragile economy and the Premises' location in a depressed neighborhood meant that there was no risk capital available for the development of conforming uses because such development was neither feasible or possible. There were no viable opportunities for the transfer of unused development rights from the Premises to adjacent properties because, at the time of the 1977 variance, all immediately adjacent and/or secondary adjacent properties

which might have provided opportunities for the transfer of unused development rights were in separate ownership, both from the Premises and from each other. There were no assemblages and the largest of the adjacent sites was barely more than 5,000 square feet, which was too small for the construction of a viable commercial building. The applicant states that the unused development rights had no value in 1977 and, even if there were, there was no market for them because there were no viable receiving sites to which they could be transferred. Therefore, an amendment to the variance to facilitate the transfer of the unused development rights from the Premises to a larger development site would not undermine the integrity of the Board's earlier findings with regards to Z.R. §§ 72-21(b) or 72-21(e).

Accordingly, the Board finds that the proposed transfer does not implicate or affect the basis for its findings pursuant to Z.R. § 72-21, specifically the (b) and (e) findings, at the time that they were made.

By correspondence dated June 12, 2020, the Fire Department states that they inspected the fire suppression system for the Premises, as follows: standpipe on January 7, 2020; sprinkler on November 22, 2019; residential flow test: permit expired. The standpipe and sprinkler systems were tested and witnessed by members of the Fire Suppression Unit and the results were satisfactory. The residential flow test is overdue, but this should not affect this application. As for the first two last above, their permits are current and are good for five years from the date of the test.

As discussed at hearing, the Board notes that, in the absence of a Department of Buildings determination regarding whether floor space on third-floor mezzanine is included in floor-area calculations, the Board assumes without deciding that the 1,178.60 square feet on the third-floor mezzanine counts as floor area. However, the Board takes no position as to whether such floor space is included or excluded from floor area calculations, and the applicant may seek a Department of Buildings determination that such floor space is excluded from the "floor area" definition, Z.R. § 12-10.

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 December 13, 1977, as amended through July 10, 2012, so that as amended this portion of the resolution shall read: "to *permit* the transfer of 29,328.68 square feet of development rights appurtenant to the Premises; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked 'October 26, 2020' – Fourteen (14) sheets; and *on further condition*:

THAT absent a determination by the Department of Buildings that 1,178.60 square feet of floor space on the third-floor mezzanine is excluded from floor area under Z.R. § 12-10, such floor space shall be included as floor area;

THAT a wet sprinkler system shall be installed and maintained throughout the Premises;



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THAT a rate of rise system shall be installed and maintained with a central office connection;

THAT an approved rate of rise device shall be connected in each apartment and be connected to a fire alarm device in the public hall on each floor;

THAT there shall be no living or sleeping quarters in the cellar

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. 313-77-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 May 24, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved drawings shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of drawings or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 9, 2020.

The Premises are located on the west side of East 23rd Street, between Avenue M and Avenue N, within an R2 zoning district, in Brooklyn. With approximately 40 feet of frontage along East 23rd Street, 100 feet of depth, and 4,000 square feet of lot area, the Premises are occupied by an existing single-family residence.

The Board has exercised jurisdiction over the Premises since August 25, 2015, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-622, to permit the enlargement of a single-family residence which does not comply with zoning requirements for floor area ratio ("FAR"), open space ratio ("OSR"), side yards, and rear yards, contrary to Z.R. §§ 23-141, 23-461, and 23-47, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the following be the bulk parameters of the building: a maximum floor area of 4,015.64 square feet (1.0 FAR), a minimum open space ratio of 54.6 percent, side yards of 2'-9" and 8'-0", and a rear yard with a minimum depth of 22'-0", all as illustrated on the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objections(s); the approved plans be considered approved only for the portions related to the specific relief granted; 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 August 25, 2019; 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.

The time to have completed construction having expired, the applicant seeks an extension.

The applicant represents that, since the Board's grant, building permits have not been obtained and no work has commenced.

At hearing, the Board expressed concern that the proposal, which does not comply with the Board's requirements for the retention of at least 50 percent of existing floor joists and exterior walls or underlying zoning requirements for side yards, requires the filing of an amendment or new special permit application that proposes an enlargement that will comply with the Board's standards and authority under Z.R. § 73-622.

By correspondence, dated October 22, 2020, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, November 9, 2020.

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## 64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern and Goldie Stexrn, 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 23<sup>rd</sup> Street, Block 7658, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Application withdrawn.

#### THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

#### THE RESOLUTION –

This is an application for an extension of time to complete construction, pursuant to a special permit granted under Z.R. § 73-622, which permitted the enlargement of an existing single-family residence, and expired on August 25, 2019.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with a continued hearing on April 6, 2020. Vice-Chair Chanda performed an inspection of the Premises and surrounding area.

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## 58-30-BZ

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens

### COMMUNITY BOARD #4Q

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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## 825-86-BZ

APPLICANT – Akerman, LLP, for Ban Realty LLC, owner.

SUBJECT – Application July 27, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial banquet hall (UG 9) and eating and drinking establishment (UG 6) contrary to zoning use regulations which expired on June 30, 2017: Amendment to permit the extension of the banquet hall by approximately 1,104 square feet and the addition of two new mezzanines for a total of 2,461 square feet, permit an increase in the maximum permitted occupancy from 850 people to a maximum occupancy of 1,008 people and propose to reduce the parking from 75 to 65 attendant parking spaces; Waiver of the Rules. R5 Zoning District.

PREMISES AFFECTED – 1703 Bronxdale Avenue, Block 4045, Lot 29, Borough of Bronx.

### COMMUNITY BOARD # 11BX

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for continued hearing.

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## 5-98-BZ

APPLICANT – Heywood Blaubeux, for Priority Landscaping Inc., owner.

SUBJECT – Application February 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for postponed hearing.

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## 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

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 November 30-December 1, 2020, at 10 A.M., for decision, hearing closed.

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## 200-01-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Bowne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center LLC, lessee.

SUBJECT – Application August 19, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (72-21) to permit the enlargement of an existing 11-story and penthouse rehabilitation and long-term care facility (Hillside Manor Rehabilitation and Extended Care Center) which expired on March 17, 2011; Waiver of the Board’s Rules. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 182-15 Hillside Avenue, Block 9950, Lot 1, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to January 25-26, 2021. At 10 A.M., for continued hearing.

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## 256-02-BZ

APPLICANT – Friedman & Gotbaum LLP, by Shelly S. Friedman, Esq.

SUBJECT – Application March 16, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2020. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 7501, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

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**ACTION OF THE BOARD** – Laid over to December 14, 2020. At 10 A.M., for decision, hearing closed.

**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 11-12, 2021, at 10 A.M., for continued hearing.

**238-07-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47<sup>th</sup> Avenue, Block 28, Lot(s) 12, 15, 17, 18, 21, Borough of Queens.

**COMMUNITY BOARD #2Q**

**ACTION OF THE BOARD** – Laid over to January 25, 2021. At 10 A.M., for postponed hearing.

**25-09-BZ**

APPLICANT – Pryor Cashman LLP, for AJJ Canal, LLC, owner; UFC Gym, lessee.

SUBJECT – Application April 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment on the third floor of a three-story commercial building which expired on November 23, 2018; Amendment to permit a change in operator from Champion Fitness to UFC Gym; Waiver of the Board’s Rules. M1-5B SoHo Iron Historic District.

PREMISES AFFECTED – 277 Canal Street, Block 209, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021. At 10 A.M., for continued hearing.

## 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**

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 November 30-December 1, 2020. At 10 A.M., for decision, hearing closed.

**2018-178-A**

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, 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 February 8-9, 2021. At 10 A.M., for adjourned hearing.

**2019-207-A**

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application August 27, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

**COMMUNITY BOARD # 2Q**

**ACTION OF THE BOARD** – Laid over to April 26-27, 2021. At 10 A.M., for postponed hearing.

**2020-16-A**

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application January 31, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block

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244, Lot 50, Borough of Queens.

## COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to April 26-27, 2021. At 10 A.M., for postponed hearing.

### 2020-40-A

APPLICANT – Goldman Harris LLC, for Allen Street Owner LLC, owner.

SUBJECT – Application May 6, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. C4-4A zoning district.

PREMISES AFFECTED – 139-141 Orchard Street, Block 415, Lot(s) 67, 63, Borough of Manhattan.

## COMMUNITY BOARD #3M

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 November 30-December 1, 2020. At 10 A.M., for decision, hearing closed.

## 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

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 18, 2015, acting on DOB Application No. 220480263, reads in pertinent part:

“ZR Section 23-141(c): FAR Permitted, existing=1.65. Requested= 3.85;

ZR Section 23-45: Minimum required front yards (corner Lot). Waiver for front yard requirements;

ZR Section 23-22: Maximum number of dwelling units, Request to add dwelling units;

ZR section 25-23 PARKING: Request to waive the number of cars required for the new density;

ZR section 25-242, PARKING: Request variance for this section. For small zoning lots 10,000 - 15,000 sf (site=10,319 sf) waives parking for lots less than 10,000 sf. Request this applies to the site;

ZR section 23-631 (d): Height and Setback: Request waiver for the regulations for the R5 regulations;

ZR 23-131 Balconies in R1-R5: request waiver of the following sections due to eccentric character of the site, Grade level is 16' below sidewalk elevation:

(b) Balconies to be located at the first floor

(3) Balconies to be located at the side yards.

This is a corner lot therefor no rear yard requirement.

ZR Section 22-10, Use Group, Request to add UG 6.”

The decision of the DOB, dated November 21, 2017, acting on DOB Application No. 220480263, further states in pertinent part:

“23-141(c): FAR permitted = 2.0, Requested = 4.5;

23-45: Minimum required front yards [(corner lot). Waiver for front yard requirements to align with existing adjacent buildings.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit the construction of a six-story residential building (4.5 FAR) with 46 dwelling units, one Use Group 3 community facility (2,309 square feet of floor area), and cellar level parking, contrary to zoning requirements for floor area (Z.R. § 23-142), front yards (Z.R. § 23-45), maximum number of dwelling units (Z.R. § 23-22), parking (Z.R. § 25-22), height and setback (Z.R. § 23-631), balconies (Z.R. § 23-131), and use (Z.R. § 22-10).

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding area. Community Board 11, the Bronx, recommends approval of this application provided that the proposal be limited to 47 dwelling units and no fewer than 24 parking spaces. A local community group recommends approval of the application; however, a separate community group objects to the application and cites concerns over the potential negative impact to area parking availability. The Board received seven form letters in objection to the application and citing concerns over potential negative impacts to noises, parking, and congestion within the neighborhood.

The Premises are located on the northeast corner of Van Nest Avenue and Adams Street, within an R5 zoning district, in the Bronx. With approximately 101 feet of frontage along Van Nest Avenue, 92 feet of frontage along Adams Street, and 10,320 square feet of lot area, the Premises are vacant.

The applicant proposes to construct a six-story residential building (4.5 FAR) with 46 dwelling units, one

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Use Group 3 community facility (2,309 square feet of floor area) at the basement level, and cellar level parking.

At hearing, the Board expressed concerns about outstanding Environmental Control Board violations; poor site conditions negatively affecting the surrounding area; inaccuracies in the parking studies supplied; a lack of explanation for how the Premises would be uniquely burdened by a retaining wall; and an inaccurate as-of-right scheme, which could likely be redesigned into a viable development.

After adjournments of the public hearings scheduled for March 17, 2020, April 1, 2020, and July 13, 2020, Board staff notified the applicant, on October 22, 2020, that the application is in jeopardy of dismissal for lack of prosecution.

By correspondence, dated October 22, 2020, the applicant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, November 9, 2020.

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## 2018-137-BZ

### CEQR #19-BSA-025Q

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** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 6, 2018, acting on DOB Application No. 421087157, reads in pertinent part:

“Proposed Use Group 3 school use is contrary to ZR Section 32-00 and thus requires a Special Permit from the BSA pursuant to ZR Section 73-19”.

This is an application under Z.R. §§ 73-19 and 73-03 to permit, on a site located partially within a C8-1 zoning district and partially within an R2A zoning district, the operation of a school, contrary to Z.R. § 32-00. This application is brought on behalf of Children of America (the “School”), a child day care center.

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 August 6, 2019, October 22, 2019, April 1, 2020, July 14, 2020, and October 6, 2020,

and then to decision on November 9, 2020. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 13, Queens, recommends disapproval of this application. The Board also received letters in objection to this application from a New York City Council Member and a neighborhood civic association citing concerns over protection of the School from the proposed mix of uses, including retail, medical office, and a gym, and potential hazardous conditions caused by School drop-offs and parking within the Premises.

The Premises are located on the northeast corner of Jericho Turnpike and Little Neck Parkway, partially within a C8-1 zoning district and partially within an R2A zoning district, in Queens. With approximately 190 feet of frontage along Jericho Turnpike, 122 feet of frontage along Little Neck Parkway, and 28,412 square feet of lot area, the Premises are occupied by an existing four-story with cellar mixed-use commercial and community facility building.

The Board has exercised jurisdiction over the Premises since June 29, 2020, when, under BSA Cal. No. 2018-145-BZ, the Board granted a special permit, under Z.R. § 73-36, to permit the operation of a physical culture establishment on portions of the first floor (3,492 square feet of floor area) and second floor (14,134 square feet of floor area), on condition that the grant be limited to a term of ten years, expiring June 29, 2030; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; minimum three-foot-wide exit pathways be maintained leading to the required exits and that pathways be maintained unobstructed, including from any equipment; an approved fire alarm and sprinkler system be maintained in the entire PCE space, as indicated on the Board-approved plans; 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, as reviewed and approved by DOB; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 2018-145-BZ”), be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by February 28, 2025; 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 shall be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The applicant proposes to convert portions of the first floor (3,214 square feet of floor area), second floor (219 square feet of floor area), third floor (10,407 square feet of

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floor area) ), for a total of 13,840 square feet, and roof for use by the School and, thus, seeks a special permit to allow the operation of a school in the C8-1 zoning district, where schools are not permitted as of right. The applicant states that approximately 3,462 square feet of the lot are located within the R2A zoning district, which will be used exclusively for vehicular entrance to the Premises and five ground-level parking stalls, striped and designated for drop-off/pick-up use by the School.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10(c) definition of “school” and submits NYC Department of Health and Mental Hygiene permits for the operation of a group child care service for children under the age of six for other locations Children of America operates. As to school-aged children ages six and older, the applicant represents that Children of America will receive a permit from New York State Office of Children and Family Services and submits that DOB has determined the School’s after-school program for school-aged children constitutes a use accessory to the primary daycare use and is, therefore, within the scope of this special permit.

With respect to Z.R. § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the School, within a district where the school is permitted as of right. The applicant represents that, to pursue the School’s programmatic needs, the School requires a building to serve a maximum of 210 children, providing 60 square feet of space per person in all classrooms, spanning six different age groups in multiple classrooms with approximately 3,000 to 5,000 square feet of outdoor space for a children’s playground area. The School further requires accessory rooms, offices and common spaces and, as such, seeks a site with, at a minimum, 10,000 square feet of floor area or development rights.

The applicant states that School’s catchment area includes the area bounded by Union Turnpike to the north, Cross Island Parkway to west, Jericho Turnpike to the south and Langdale Street to the east, representing approximately a minimum of 1,000 children aged 0-4 that live within a one-mile radius of the Premises and a minimum of 3,000 children aged 0-4 that live within a three-mile radius of the Premises. The applicant represents that no sites are available within the surrounding area, including R2A, R3-2, R4, and R4-1 zoning districts, that would provide approximately 10,000 square feet of space with an additional 3,000 to 5,000 square feet of outdoor playground space, that did not require substantial improvement or were available for lease or purchase. Thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as of right. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are

met.

Z.R. § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right. The applicant represents that the School is located within 400 feet of the boundary of a district where the School is permitted as of right. Specifically, the applicant notes that the Premises are immediately adjacent to an R2A zoning district where school use is permitted as of right. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of an R2A zoning district. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic, and other adverse effects of the surrounding non-residential district. The applicant prepared a noise analysis to determine whether the project will generate any mobile or stationary sources of noise based on the proposed School; or, be in an area with existing high ambient noise levels to affect the proposed sensitive users of the daycare use. As to noise generated by the proposed play area, the noise study determined that noise levels at the Premises and nearby residences fall within acceptable levels for residential, commercial and community facility uses, and the applicant represents that normal window/wall attenuation is sufficient to ensure that the students will be adequately separated from the noise of the non-residential district.

The applicant submitted evidence that the proposed School will not result in a 100 percent or more increase in noise passenger car equivalents on Little Neck Parkway or Jericho Turnpike, which are public streets that carry significant traffic and, therefore, is unlikely that the operation of the School will cause a significant adverse noise impact.

Thus, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the School will be located can be controlled so as to protect children traveling to and from the School. Over the course of hearings and in response to community and inter-agency concerns, the Board questioned the safety of the maneuverability about the School with respect to child drop-offs and pick-ups, and pedestrian and vehicular conflicts on the ground level and in the garage.

The applicant represents that cars entering the Premises to drop off children at the School will have their own exclusive path of travel in the R2A portion of the lot that is dedicated solely for day care drop-off and pick-up. Specifically, a five-foot wide sidewalk will be provided along the northern edge of the property line that leads directly from the parking area to the dedicated crosswalk providing safe pedestrian access from when parents/children leave the car until reaching the crosswalk in the middle of the driveway, as well as for those pedestrians entering the Premises from Little Neck Parkway. A dedicated crosswalk

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will be provided to safely allow the parents and children to cross from the drop-off area into the entrance of the building. Signs reading “Stop for pedestrians in crosswalk” will be placed throughout the ground level parking lot to ensure the safety of the children and guardians walking in and out of the daycare facility. Users of the daycare will not need to cross any adjacent streets to enter the Premises.

One 24-foot-wide curb cut along Little Neck Parkway will allow entry and exit towards the northern part of the Premises. Cars traveling south on Little Neck Parkway will be able to turn into the Premises from the right turning lane. The applicant represents that flexible bollards will be installed at the intersection of Jamaica Avenue (Jericho Turnpike) and Little Neck Parkway, situated in a way to not allow left-hand turns into the Premises from those travelling northbound on Little Neck Parkway and preventing any left-hand turns from cars leaving the Premises to travel northbound on Little Neck Parkway. Consequently, cars entering and exiting the Premises will only be allowed to make righthand turns. The applicant also represents that the School has a dedicated elevator that serves only School spaces and patrons.

By correspondence dated October 9, 2019, the Department of Transportation (“DOT”) School Safety division relayed that it had no comments on the application because it does not fall in their K-12 focus area.

By letter dated October 6, 2020, the DOT Office of Project Analysis/CEQR Traffic Engineering and Planning Division states that traffic levels of service (LOS) analyses were conducted for the weekday AM and PM peak hours at two intersections (Jericho Turnpike/Little Neck Parkway and Little Neck Parkway/87th Drive). The applicant identified improvement measures to protect children traveling to and from the School involving lane configuration by modifying the curbside parking regulations, lane re-striping, signal timing modifications, and installation of vertical delineators, etc. In order to verify the need for the proposed improvement measures, additional safety measures, and to determine the extent of future volume projections, the applicant has committed to conducting a transportation monitoring program (TMP) which will include the following locations: 1) Jericho Turnpike and Little Neck Parkway; and 2) Little Neck Parkway and 87th Drive. The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; LOS analyses including progression and queuing analyses; etc. The applicant shall contact NYC DOT at project opening and in subsequent quarterly intervals to report occupancy status to aid NYC DOT in determining when the TMP will be conducted. Prior to undertaking any TMP, the applicant will prepare and submit a scope of work for NYC DOT review and approval. The Applicant will submit a report summarizing the finding of the TMP as well as all necessary materials, for NYC DOT’s review and approval. The Applicant will be responsible for all costs associated with TMP, design and installation of the proposed project-related improvements, and/or any subsequent measures

recommended by the TMP as per NYC DOT’s direction. NYC DOT will continue to participate in the review process related to proposed geometric reconfiguration, signal timing modifications, installation of delineators and any other improvements recommended by the TMP. The Applicant should submit all relevant materials such as drawings/design as per AASHTO and NYC DOT specifications, LOS analyses, etc. for NYC DOT review and approval.

Therefore, the Board finds that the requirements of Z.R. § 73-19(d) are met.

By letter dated January 28, 2020, the Fire Department states that it has no objection to this application. The owner’s representatives have met with members of the Fire Department’s Technology Management Unit and have amended their plans addressing the Department’s concerns regarding sprinkler protection, firefighter access, and locations of the parking stackers. The Bureau’s Technology Management Unit will continue their review of the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood.

The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 19BSA025Q dated November 9, 2020. The EAS documents show that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By letter dated May 28, 2019, the Department of Environmental Protection (“DEP”) states that DEP, Bureau of Environmental Planning and Analysis has reviewed the response and the revised Environmental Assessment Statements, both dated April 16, 2019, for the above referenced project. The proposed development is a mixed-use four-story building under construction located at 251-77 Jericho Turnpike (Block 8668, Lot 108) in the Floral Park neighborhood of Queens Community District 13. Per BSA request, DEP reviewed the revised EAS and the supporting documentation for the air quality and the noise assessments for the proposed action.

As to air quality, DEP states: 1) the proposed project would not have a significant air quality impact; the project

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generated vehicular trips are expected to be lower than the mobile source screening threshold of 170 trips per hour. Based on the size of the proposed project, the stationary source impact from the HVAC system of the proposed project are also below the CEQR screening threshold. The industrial source assessment identified an automobile body shop with small part of the facility located within the boundary of the 400-foot radius from the edge of the project site. Since its exhaust is located outside of the 400-foot radius, a detailed assessment is not needed; 2) note that an assessment is provided in the EAS for the automobile body shop, but there is a potential fatal flaw: the assessment assumed an 80% control efficiency for the emissions. Given the facility does not have an air permit, it may not have the necessary emission controls. Therefore, this methodology should not be used for any projects in the future.

As to noise DEP states: the proposed project would not have a significant noise impact. The project generated trips would not double the PCEs from the existing condition (Jericho Turnpike and Little Neck Parkway are both arterials roadways). The interior noise measurements showed noise levels complying with the 45/50 dBA interior noise goals. However, it is noted that the assessment for the day care area on the first floor was based on measurement from the northern frontage of the project site.

By letter dated August 17, 2020, DEP states that DEP Bureau of Sustainability (DEP) has reviewed the July 2020 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) prepared by the applicant for the subject project. It is DEP's understanding that the applicant is seeking a special permit from the Board of Standards and Appeals pursuant to Section 73-19 of the Zoning Resolution of the City of New York to permit a change of use (Proposed Action). The Proposed Action would allow a Use Group 3 daycare facility in an under-construction mixed-use building located at 251-77 Jericho Turnpike; Block 8668, Lot 108 (Development Site) in the Floral Park neighborhood of Queens Community District 13. The approximately 28,412 square foot Development Site is currently under construction with an as-of-right four story, approximately 58,247 gross square foot building (excluding the below-grade cellar). With the Proposed Action, the as-of-right building would be comprised of approximately 33,033 gross square feet of community facility uses, approximately 25,214 gross square feet of commercial uses, and approximately 29,420 gross square feet of below-grade parking and mechanical space (Proposed Development). The community facility space would consist of approximately 15,189 gross square feet of ambulatory and diagnostic treatment facility (medical office) uses, approximately 3,622 gross square feet of philanthropic institution without any sleeping accommodations, and approximately 14,222 gross square feet of daycare uses. The commercial space would consist of approximately 7,588 gross square feet of ground floor local retail and approximately 17,626 gross square feet of a proposed physical cultural establishment (PCE) use. The Proposed Development would also include 134 accessory parking

spaces located below grade (approximately 27,475 gross square feet), with five spaces located on-grade for daycare pick-up and drop-off only. It should be noted that a separate application is being filed to permit the proposed PCE use. The proposed action included the addition of a 9,354 square foot cellar in the northern portion of the currently under construction building. This area would require additional soil excavation from grade to approximately 17 feet below grade.

The July 2020 RAP proposes the excavation, transportation and off-site disposal of soil in accordance with applicable federal, state and local laws and regulations; stockpiled soil will be covered with appropriately anchored plastic tarps; dust control; air monitoring; removal of underground storage tanks in compliance with applicable federal, state and local laws and regulations; liquids discharged into the New York City sewer system will receive prior approval by DEP; installation of a composite cover system; installation of two feet of clean soil in all open space and landscaped areas; installation of a vapor barrier system consisting of a 60-mil Carlisle Coating and Water Proofing MiraPly Waterproofing System below the proposed cellar slab and along the proposed foundation walls; and installation of a ventilation system for the cellar-level parking garage. The July 2020 CHASP addresses worker and community health and safety during construction.

Based on review of the submitted documentation, DEP has the following comments and recommendations to BSA:

*Remedial Action Plan*

BSA should instruct the applicant that the clean fill/topsoil to be used in open space/landscaped areas must be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one (1) sample for every 250 cubic yards, analyze the samples for Target Compound List volatile organic compounds by United States Environmental Protection Agency (EPA) Method 8260, semivolatile organic compounds by EPA Method 8270, pesticides by EPA Method 8081, polychlorinated biphenyls by EPA Method 8082, and Target Analyte List metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, compared to New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 Environmental Remediation Programs. Upon completion of the investigation activities, the applicant should submit a detailed clean soil report for DEP review and approval prior to importation and placement on-site. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs).

*Construction Health and Safety Plan*



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BSA should instruct the applicant include information fact sheets or safety data sheets for potential chemicals of concern. BSA should instruct the applicant include an accident and injury report form.

DEP finds the July 2020 RAP and CHASP for the proposed project acceptable as long as the aforementioned information is incorporated into the RAP and CHASP. BSA should instruct the applicant that at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report should be submitted for DEP review and approval for the proposed project. The P.E. certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; installation of vapor barrier; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.).

The applicant submitted a revised September 2020 RAP and CHASP addressing comments from DEP's August 17, 2020 letter.

By letter dated October 6, 2020, the DOT Office of Project Analysis/CEQR Traffic Engineering and Planning Division states that, following the 2014 *CEQR Technical Manual* Level 1 (Project Trip Generation) and Level 2 (Project Generated Trip Assignment) screening assessments, traffic levels of service (LOS) analyses were conducted for the weekday AM and PM peak hours at two intersections (Jericho Turnpike/Little Neck Parkway and Little Neck Parkway/87th Drive). The EAS identifies improvement measures involving lane configuration by modifying the curbside parking regulations, lane re-striping, signal timing modifications, and installation of vertical delineators, etc. In order to verify the need for the proposed improvement measures identified in the EAS, additional safety measures, and to determine the extent to which future volume projections presented in the EAS, the applicant has committed to conducting a transportation monitoring program (TMP) which will include the following locations: 1) Jericho Turnpike and Little Neck Parkway; and 2) Little Neck Parkway and 87th Drive. The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; LOS analyses including progression and queuing analyses; etc. The applicant shall contact NYC DOT at project opening and in subsequent quarterly intervals to report occupancy status to aid NYC DOT in determining when the TMP will be conducted as outlined in the Final EAS and Project Commitment Letter. Prior to undertaking any TMP, the applicant will prepare and submit a scope of work for NYC DOT review and approval. The Applicant will submit a report summarizing the finding of the TMP as well as all necessary materials, for NYC DOT's review and approval. The Applicant will be responsible for all costs associated with TMP, design and installation of the proposed project-related improvements, and/or any subsequent measures

recommended by the TMP as per NYC DOT's direction. NYC DOT will continue to participate in the review process related to proposed geometric reconfiguration, signal timing modifications, installation of delineators and any other improvements recommended by the TMP. The Applicant should submit all relevant materials such as drawings/design as per AASHTO and NYC DOT specifications, LOS analyses, etc. for NYC DOT review and approval.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Based on the foregoing, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-19 and 73-03 to *permit*, on a located partially within a C8-1 zoning district and partially within an R2A zoning district, the operation of a school, contrary to Z.R. § 32-00; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 22, 2020"—Sixteen (16) sheets; and *on further condition*:

THAT all transportation measures as described in the Final Environmental Assessment Statement Attachment D: Transportation and DOT Post-Approval Commitment Letter (CEQR No. 19BSA025Q) shall be implemented with final approval of measures to be determined by the DOT;

THAT as per the DEP-approved July 2020 RAP: a composite cover system shall be installed; a vapor barrier system consisting of a 60-mil Carlisle coating and water proofing Miraply waterproofing system below the proposed cellar slab and along the proposed foundation walls shall be installed; and a ventilations system for the cellar-level parking garage shall be installed.

THAT two feet of clean soil shall be installed in all open space and landscaped areas. Prior to soil importation and placement on-site, a detailed clean soil report shall be submitted for DEP review and approval;

THAT at the completion of the remediation project, a Professional Engineer (P.E.) certified Remedial Closure Report should be submitted for DEP 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. 2018-137-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 May 24, 2025;

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THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved drawings shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2020.

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**2019-15-BZ**

**CEQR #19-BSA-076Q**

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** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 25, 2019, acting on New Building Application No. 421924591, reads in pertinent part:

“Proposed Day Care center (UG 4A) is not permitted as-of-right in M1-1 zoning district per ZR Section 42-10, and therefore requires a Special Permit from the Board of Standards and Appeals pursuant to ZR section 73-19.”

This is an application under Z.R. §§ 73-19 and 73-03 to permit, on a site located within a M1-1 zoning district, the operation of a Use Group (“UG”) 3 school, contrary to Z.R. § 42-10. This application is brought on behalf of Children of America (the “School”), a child day care center.

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, October 22, 2019, April 6, 2020, July 14, 2020, and October 6, 2020, and then to decision on November 9, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 5, Queens, recommends approval of this application on condition that safe traffic and pedestrian access to the subject site can be provided; signage for each of the driveway exits be provided

stating “Right Turn Only”; and that westbound Cooper Avenue traffic not be able to make left turns into each of the driveway entrances. The Board also received one form letter in support of this application and one form letter objecting to this application, stating that the proposed use is not permitted in this zoning district.

The Premises are located on the south side of Cooper Avenue, between 79th Place and 80th Street, within a M1-1 zoning district, in Queens. With approximately 357 feet of frontage along Cooper Avenue, 254 feet of depth, and 83,761 square feet of lot area, the Premises are partially occupied by a five-story with cellar and sub-cellar UG 16 self-storage and warehouse building.

The applicant proposes to construct a new one-story commercial retail building (3,986 square feet of floor area) and two-story community facility (11,226 square feet of floor area) for use by the School. The entirety of the Premises would also contain 46 accessory parking spaces. The applicant seeks a special permit to allow the operation of a school in the M1-1 district, where UG 3 schools are not permitted as of right. The applicant states that the commercial portion of the building would be a UG 6 use, which is permitted as-of-right in an M1-1 zoning district.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10(c) definition of “school” and represents that it would operate under a permit issued pursuant to NYC Health Code § 47.03, as would the universal pre-k component of the proposed daycare. The applicant states that it would comply with all of the necessary Department of Health and Mental Hygiene requirements for the operation of a group child care service for children within New York City, including providing constant competent supervision; maintaining minimum staff-child ratios and adhering to the maximum group sizes; implementing all required fire safety measures; implementing a written safety plan; and hiring qualified staff. The applicant represents that it will apply for the required permit from the NYC Department of Health and Mental Hygiene for the proposed new daycare at the Premises as is required for a certificate of occupancy. Accordingly, the Board has determined that the School’s operations fall within the scope of this special permit.

With respect to Z.R. § 73-19(a), an applicant must demonstrate its inability to obtain a site for the development of a school within the neighborhood to be served, and with a size sufficient to meet the programmatic needs of the School, within a district where the school is permitted as of right. Here, the applicant states that it was unable to find an appropriate site of adequate size in the neighborhood within a zoning district where the proposed UG 3 use would be permitted as of right. The applicant states that in order to pursue its programmatic needs, the School requires a building to serve approximately 167 students, providing a minimum of 30 square feet of space for each child in a

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classroom, spanning six different age groups in multiple classrooms with approximately 3,000 to 5,000 square feet of outdoor space for a children's playground area. The School further requires accessory rooms, offices, and common spaces and, as such, seeks a site with, at a minimum, 10,000 square feet of floor area.

The applicant notes that the School is a for-profit daycare operator which uses demographic information including the population of appropriate aged children and median household incomes in site selection. The applicant represents, that the School chose to search for a site in the Middle Village area of Queens because there are a sufficient number of appropriately aged children and median household incomes that meet its criteria for a viable daycare facility. The applicant maintains that, according to their demographic research, the area is underserved with regard to daycare facilities.

The applicant represents that no sites are available within the surrounding area, including R2A, R3-2, R4, and R4-1 zoning districts, that would provide approximately 10,000 square feet of space with an additional 3,000 to 5,000 square feet of outdoor playground space, that did not require substantial improvement or were available for lease or purchase within its price range. Thus, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as of right. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

Z.R. § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right. The applicant represents that the School is located within 400 feet of the boundary of a district where the School is permitted as of right. Specifically, the applicant notes that the Premises are immediately adjacent to R4 and an R4-1 zoning districts, north of Cooper Avenue, where school use is permitted as of right. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of R4 and R4-1 zoning districts. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic, and other adverse effects of the surrounding non-residential district. Here, the applicant reiterates that although the subject site is located in an M1-1 district, the surrounding sites are R4 and R4-1 zoning districts. The applicant studied the surrounding area to determine that there is adequate separation for the proposed daycare center from noise, traffic, and other potential adverse effects. More specifically, the applicant's analysis indicates the Premises and nearby residences would fall within acceptable levels for residential, commercial, and community-facility uses, and the applicant represents that normal window-wall attenuation is sufficient to ensure that the students will be adequately separated from the noise of the non-residential district. The applicant further studied air quality, concluding

the facility would not be adversely affected by the surrounding area pursuant to acceptable New York City and State levels. Accordingly, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the School will be located can be controlled so as to protect children traveling to and from the School. Over the course of hearings and in response to community and inter-agency concerns, the Board raised concerns over the safety of the maneuverability of the School with respect to child drop-offs and pick-ups. The applicant represents that the proposed entrance for the School would be located at the rear of the building and accessible via the on-site parking lot, away from the main vehicular entrance to the Premises. Additionally, a walkway would be provided from a sidewalk that ranges between 10 and 15 feet along Cooper Avenue to the School entrance for parents and caretakers who do not arrive by car. Specifically, children and parents who arrive by walking from the surrounding neighborhood or from public transportation would access the building from the sidewalk along Cooper Avenue and bring children into the building along the walkway on the western side of the building to its entrance at the rear of the building.

The applicant represents that the principal access routes to and from the School are from the intersection of 80th Street and Cooper Avenue, to the east of the proposed building, and from this intersection to the site there are no crosswalks connecting the south sidewalk to the north sidewalk of Cooper Avenue until the intersection of 74th Street and Cooper Avenue. Pedestrians from all directions would be forced to make use of the 80th Street and Cooper Avenue, high visibility crosswalk located at the intersection to access the south sidewalk of Cooper Avenue by walking in a westerly direction on the south sidewalk and cross through the pedestrian crossing at Valentine Place and Cooper Avenue. The applicant states that this intersection has existing ADA-compliant pedestrian curb cuts, and Valentine Place has low traffic volumes since it is a dead-end road serving primarily single-family residential buildings; and, to the west of Valentine Place, no additional crosswalks are present to access the proposed day care center. As such, this intersection would be able to handle the additional traffic brought about by the School's students.

The applicant proposes to implement safety measures to further ensure pedestrian safety, including: providing access and parking to and from the day care center that would be separate from the access and parking to and from the self-storage facility constructed on the rear portion of the development site; creating two new driveways, one on each side of the School would extend from Cooper Avenue to the drop-off/pickup area and accessory parking lot; adding a new high visibility crosswalk at the intersections of Valentine Place and Cooper Avenue and 79th Place and Cooper Avenue; and erecting "School Zone Ahead" signage along Cooper Avenue approaching the Premises between 69th Road and 69th Drive to the east and between 79th Street and 79th Place to the west.

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By correspondence dated June 14, 2019, the Department of Transportation (“DOT”) School Safety division states that it has no comments on the application because it does not fall within their K-12 focus area.

By letter dated October 6, 2020, the DOT Office of Project Analysis/CEQR Traffic Engineering and Planning Division states that, following the 2014 *CEQR Technical Manual* Level 1 (Project Trip Generation) and Level 2 (Project Generated Trip Assignment) screening assessments, traffic levels of service (“LOS”) analyses were conducted for the weekday AM and PM peak hours at two intersections (Cooper Avenue/80th Street and Cooper Avenue/Project Site Entrance). The EAS identifies improvement measures including a new crosswalk, re-striping, and signal timing modifications. In order to verify the need for the proposed improvement measures identified in the EAS, any safety measures, and to determine the extent to which future volume projections presented in the EAS, the applicant has committed to conducting a transportation monitoring program (“TMP”) which will include the following locations: 1) Cooper Avenue and 80th Street; and 2) Cooper Avenue and Project Driveway. The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; LOS analyses including progression and queuing analyses; etc. The applicant shall contact NYC DOT at project opening and in subsequent quarterly intervals to report occupancy status to aid NYC DOT in determining when the TMP will be conducted as outlined in the Final EAS and Project Commitment Letter. Prior to undertaking any TMP, the applicant will prepare and submit a scope of work for NYC DOT review and approval. The Applicant will submit a report summarizing the finding of the TMP as well as all necessary materials, for NYC DOT’s review and approval. The Applicant will be responsible for all costs associated with TMP, design and installation of the proposed project-related improvements, and/or any subsequent measures recommended by the TMP as per NYC DOT’s direction. NYC DOT will continue to participate in the review process related to proposed geometric reconfiguration, signal timing modifications, installation of delineators and any other improvements recommended by the TMP. The Applicant should submit all relevant materials such as drawings/design as per AASHTO and NYC DOT specifications, LOS analyses, etc. for NYC DOT review and approval.

Accordingly, the Board finds that the requirements of Z.R. § 73-19(d) are met.

By letter dated August 12, 2019, the Fire Department states that it requests the Board to notes that its Standard Operating Procedures (“SOP”) while responding to medical or fire emergencies is to stage at the front of all buildings. Therefore, any Fire Department apparatus responding to the Premises would stage directly onto Cooper Avenue and would be assisted by the Police Department to direct traffic. Since the use of the space is for a daycare, the Department’s response would include both an ambulance and an engine (E319) at the Premises. By correspondence dated October

21, 2020, the Fire Department states that it has no objection to this application. The Fire Department, Bureau of Fire Prevention has reviewed the plans for the proposed roof playground and access is shown for Fire Department operations. The Bureau of Fire Prevention will inspect these Premises and enforce all applicable rules and regulations.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood.

The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 19BSA076Q, dated November 9, 2020. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By correspondence dated June 28, 2019, the Landmarks Preservation Commission represents that there are no architectural or archaeological concerns.

By letter dated June 13, 2019, the Department of Environmental Protection (“DEP”) states that DEP, Bureau of Environmental Planning and Analysis has reviewed the response and the revised EAS, dated June 4, 2019, for the above referenced project. The applicant is seeking approval to develop a new UG 3 day care center to occupy a portion of a new, approximately 17,929 gross square feet, mixed-use building within an M1-1 district, located at 79-40 Cooper Avenue (Block 3803, Lot 39; Block 3804, Lots 1, 164, 178) in the Middle Village neighborhood of the Queens Community District 5. Per BSA request, DEP reviewed the revised EAS and the supporting documentation for the air quality for the proposed action. As to air quality, DEP states the proposed project would not have a significant adverse impact on air quality impact.

By letter dated April 10, 2020, DEP states that DEP, Bureau of Sustainability has reviewed the March 2020 Phase II Site Investigation (Phase II), the March 2020 Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) prepared on behalf of the applicant for the subject project. It is DEP’s understanding that the applicant is seeking a special permit from the Board of Standards and Appeals pursuant to Section 73-19 of the Zoning Resolution of the City of New York to allow the development of a new Use Group 3 day care center in an existing M1-1 district (Proposed Action). The Proposed

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Action would allow a Use Group 3 day care center to occupy a portion of a new, approximately 17, 929 gross square feet (“gsf”) building located at 79-40 Cooper Avenue (Block 3803, Lot 39; Block 3804, Lots 1, 164, and 178) (Development Site) in the Middle Village neighborhood of Queens Community District 5. The northeastern portion of the approximately 83,761 square feet Development Site would be developed with a one- and two-story, approximately 17,929 gsf commercial and community facility building (Proposed Project), while the southern portion of the Development Site is currently being developed with an as-of-right five-story, approximately, 129,399 gsf self-storage building. The Proposed Project would comprise of approximately 6,703 gsf as-of-right commercial uses located in the cellar and one-story portion of the proposed building and approximately 11,226 gsf of Use Group 3 community facility uses located in the two-story portion of the proposed building. The community facility space of the proposed building is the only portion of the proposed building that would be subject to the requested special permit. The Proposed Project would also include a total of 32 accessory parking spaces.

The March 2020 RAP proposes the removal of underground storage tanks and closure of petroleum spills in compliance with applicable local, state, and federal laws and regulations; excavation, transportation, and off-site disposal in accordance with all applicable federal, state, and local regulations; stockpiled soil will be covered with appropriately anchored plastic tarps; dust control; air monitoring; construction and maintenance of an engineered composite cover consisting of a minimum of one foot of certified-clean soil in landscaped areas not capped by asphalt/concrete; installation of minimum 30-mil Geo-Seal vapor barrier and passive sub-slab venting system (SSVS) beneath the proposed building. The SSVS could be retro-fitted to allow for the future conversion to an active system. The March 2020 CHASP addresses worker and community health and safety during construction.

Based on review of the submitted documentation, DEP has the following comments and recommendations to BSA:

#### *Remedial Action Plan*

BSA should instruct the applicant that at the completion of the building, post-mitigation indoor and outdoor air sampling will be required to determine if conversion of the passive SSVS to an active SSVS is warranted. An investigation work plan and health and safety plan for the proposed sampling activities should be submitted for DEP review and approval.

#### *Construction Health and Safety Plan*

BSA should instruct the applicant to include information fact sheets or safety data sheets for potential chemicals of concern (VOCs, SVOCs, pesticides, PCBs, and heavy metals). BSA should instruct the applicant to include the name and phone number of an Alternative Health and Safety Officer.

DEP finds the March 2020 RAP and CHASP for the

proposed project acceptable as long as the aforementioned information is incorporated into the RAP and CHASP. BSA should instruct the applicant that at the competition of the project, a Professional Engineer (P.E.) certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; one foot of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, installation of vapor barrier and installation SSVS, post-mitigation sampling, etc.).

The applicant submitted a revised June 2020 RAP and CHASP addressing comments from DEP’s April 10, 2020 letter.

By letter dated June 24, 2020, DEP states that DEP, Bureau of Environmental Planning and Analysis has reviewed the response and the revised EAS, dated June 4, 2020, for the above referenced project. Per BSA request, DEP reviewed the revised EAS and the supporting documentation for the air quality for the proposed action. As to noise DEP states: based on the results of the mobile- and stationary-source noise analyses performed as per the City Environmental Quality Review (“CEQR”) Technical Manual, it was determined that the proposed project, including outdoor play area, would not result in any potential for significant adverse impacts in regards to noise.

By letter dated October 6, 2020, the DOT Office of Project Analysis/CEQR Traffic Engineering and Planning Division states that, following the 2014 *CEQR Technical Manual* Level 1 (Project Trip Generation) and Level 2 (Project Generated Trip Assignment) screening assessments, traffic levels of service (“LOS”) analyses were conducted for the weekday AM and PM peak hours at two intersections (Cooper Avenue/80th Street and Cooper Avenue/Project Site Entrance). The EAS identifies improvement measures including a new crosswalk, re-striping, and signal timing modifications. In order to verify the need for the proposed improvement measures identified in the EAS, any safety measures, and to determine the extent to which future volume projections presented in the EAS, the applicant has committed to conducting a transportation monitoring program (“TMP”) which will include the following locations: 1) Cooper Avenue and 80th Street; and 2) Cooper Avenue and Project Driveway. The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; LOS analyses including progression and queuing analyses; etc. The applicant shall contact NYC DOT at project opening and in subsequent quarterly intervals to report occupancy status to aid NYC DOT in determining when the TMP will be conducted as outlined in the Final EAS and Project Commitment Letter. Prior to undertaking any TMP, the applicant will prepare and submit a scope of work for NYC DOT review and approval. The Applicant will submit a report summarizing the finding of the TMP as well as all necessary materials, for NYC DOT’s review and approval. The Applicant will be responsible for all costs

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associated with TMP, design and installation of the proposed project-related improvements, and/or any subsequent measures recommended by the TMP as per NYC DOT's direction. NYC DOT will continue to participate in the review process related to proposed geometric reconfiguration, signal timing modifications, installation of delineators and any other improvements recommended by the TMP. The Applicant should submit all relevant materials such as drawings/design as per AASHTO and NYC DOT specifications, LOS analyses, etc. for NYC DOT review and approval.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

Based on the foregoing, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-19 and 73-03 and that the applicant has substantiated a basis for warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under Z.R. §§ 73-19 and 73-03 to *permit*, on a located within an M1-1 zoning district, the operation of a school, contrary to Z.R. § 42-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 7, 2020" - Thirteen (13) sheets; and *on further condition*:

THAT a minimum 28 dBA of composite window/wall attenuation on the Cooper Avenue frontage of the community facility portion of the proposed building is required in order to achieve the required community facility interior noise level of 45 dBA or lower. A closed-window condition and alternate means of ventilation must be provided;

THAT the applicant shall comply with all items of the final RAP and CHASP including: soil removal and disposal conducted in accordance with NYSDEC regulations, a minimum of one foot of DEP-approved certified clean fill/top soil capping in any landscaped/grass covered areas not capped with concrete/asphalt, installation of a vapor barrier and SSVS, and post-mitigation sampling;

THAT the applicant, at the completion of the building, will conduct post-mitigation indoor and outdoor air sampling to determine if conversion of the passive SSVS to an active SSVS is warranted;

THAT an investigation work plan and health and safety plan for the proposed sampling activities should be submitted to DEP for review and approval;

THAT at the completion of the project a Professional Engineer certified Remedial Closure Report should be submitted for DEP review and approval;

THAT all transportation measures as described in the Final Environmental Assessment Statement, Attachment D: Transportation (CEQR No. 19BSA076Q) shall be implemented with final approval of measures to be determined by NYC DOT;

THAT, prior to undertaking any TMP, the applicant shall prepare and submit a scope of work for NYC DOT review and approval;

THAT the applicant shall submit a report summarizing the finding of the TMP as well as all necessary materials, for NYC DOT's review and approval;

THAT the applicant shall be responsible for all costs associated with TMP, design and installation of the proposed project-related improvements, and/or any subsequent measures recommended by the TMP as per NYC DOT's direction;

THAT the applicant shall submit all relevant materials such as drawings/design as per AASHTO and NYC DOT specifications, LOS analyses, etc. for NYC DOT review and approval;

THAT the applicant shall commit to re-stripping high visibility crosswalks across Valentine's Place and 79th Place on their approach to Cooper Avenue;

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. 2019-15-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 June 3, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved drawings shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2020.

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**CORRECTION: This resolution adopted on November 9, 2020, under Calendar No. 2019-188-BZ, is hereby corrected to read as follows:**

**2019-188-BZ**

**CEQR #20-BSA-004X**

APPLICANT – Pryor Cashman LLP, for McDonald's USA LLC, owner.

SUBJECT – Application July 12, 2019 – 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.

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PREMISES AFFECTED – 1212 East Gun Hill Road, through lot, with frontages on East Gun Hill Road, Tenbroeck Avenue and Pearsall Avenue. Block 4617, Lot 40. Borough of the Bronx.

## COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

### THE RESOLUTION –

The decision of the Department of Buildings, dated June 21, 2019, acting on Alteration Type I Application No. 220644818, reads in pertinent part:

“Accessory drive through not permitted as-of-right in C1-2. Obtain special permit pursuant to ZR 73-253.”

This is an application under Z.R. §§ 73-243 and 73-03 to permit, in a C1-2 (R5) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, with continued hearings on May 5, 2020, June 30, 2020, and September 15, 2020, and then to decision on November 9, 2020. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the northeast corner of Tenbroeck Avenue and East Gun Hill Road, in a C1-2 (R5) zoning district, in The Bronx. The Premises have approximately 214 feet of frontage along East Gun Hill Road, 133 feet of frontage along Tenbroeck Avenue, 92 feet of frontage along Pearsall Avenue, 24,469 square feet of lot area, and are currently occupied by a one-story eating and drinking establishment (approximately 6,319 square feet of floor area) with an accessory drive-through facility.

The Board notes that in addition to the foregoing, its determination is also subject to and guided by Z.R. § 73-03. Furthermore, the Board notes that, pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

As a threshold matter, the Board notes that this site is within the boundaries of a designated area in which the subject special permit is available.

The applicant submits that the eating and drinking establishment is designed for safe maneuvering and that the

drive-through lane provides space for the queuing of a minimum of ten vehicles without interfering with parking. Accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than ten automobiles.

The applicant represents that the layout of the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity. Specifically, the applicant states that the entrance to the drive-through is located at East Gun Hill Road, a two-way, wide thoroughfare and will contain two separate menu boards located on the west side of the building. The applicant further represents that the drive-through facility has its own dedicated 10-foot wide independent exit onto East Gun Hill Road. Accordingly, the Board finds that the subject drive-through facility will cause minimal interference with traffic flow in the immediate vicinity.

The applicant represents that the eating or drinking establishment with an accessory drive-through facility fully complies with the accessory off-street parking regulations for the C1-2 zoning district in which the Premises are located. Specifically, the applicant states that, pursuant to Z.R. § 36-21, the minimum required number of off-street parking spaces is 21; the Premises proposes 21 accessory off-street parking spaces. Accordingly, the Board finds that the subject eating or drinking place with accessory drive-through facility fully complies with the accessory off-street parking regulations for a C1-2 (R5) zoning district, including the provision of the required number of accessory off-street parking spaces.

The applicant represents that the character of the commercially zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle. Here, the applicant reiterates that the entrance and exit to the drive-through facility are located on East Gun Hill Road, a two-way thoroughfare, which runs beyond 500 feet from the site, and, therefore, the character of the street frontage within 500 feet of the Premises reflects substantial orientation toward the motor vehicle. Accordingly, the Board finds that the character of the commercially zoned street frontage within 500 feet of the subject site reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing commercial uses contained within such area and to the subject eating or drinking place (excluding the accessory drive-through facility portion).

The applicant represents that the drive-through facility would not have an adverse impact on residence within the immediate vicinity of the subject Premises. Moreover, the applicant states that the Premises contain frontages on three two-way streets: East Gun Hill Road, Tenbroeck Avenue, and Pearsall Avenue. Additionally, the rear of the Premises faces a three-story residential building and a two-story residence, while the menu board is located 55 feet from the nearest residence and is buffered by a small triangular parcel (Lot 28), which it also owns. The applicant also proposes to provide additional buffering with an acoustical fence, to be installed on the existing six-foot high metal picket fence

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along the entire southern lot line. 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 Premises and finds that there will be adequate buffering between the drive-through facility and adjacent residential uses.

Over the course of hearings, the Board raised concerns about the nature of the landscaping at the Premises; the amount of noise emanating from customers' vehicles; the navigability of the drive-through; and the applicant's request for a 24-hour drive-through. In response to the issues around the landscaping at the Premises, the applicant proposes planting that would deter rodents, wheel stops to protect the landscaping, and a double row of living plants along landscaped areas located adjacent to the lot lines. To address the noise issues, the applicant plans to install an acoustical fence to be put on the metal picket fence on the southern lot line, adjust the menu boards farther away from the adjacent residential properties, and erect "Respect Your Neighbor" signs. To address the navigability of the drive-through, the applicant proposes to put "Do Not Enter" and "Exit Only" at the exit of the Premises onto East Gun Hill Road. Finally, the applicant amended the proposed hours of operation for the drive-through. The new hours of operation are Sunday through Thursday, 6:00 a.m. to 12:00 a.m., and Friday and Saturday, 6:00 a.m. to 1:00 a.m.

By letter dated February 1, 2020, the Fire Department states that it has reviewed the plans for this application and that inspections had been performed by the Bureau of Fire Prevention Rangoon ("RHU") of the range hood suppression systems and found to be in compliance with the rules and regulations of the department, and permits are current. Based upon the foregoing, the department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based on the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed special permit use will not interfere with any pending public improvement project.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement Checklist No. 20BSA004X, dated November 9, 2020.

In light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-243 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved,* that the Board of Standards and Appeals does hereby *issue* a unitive 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 does hereby make each an 32-10d every one of the required findings under Z.R. §§ 73-243 and 73-03 to *permit*, in a C1-2 (R5) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. §32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 18, 2020"-Fourteen (14) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five years, expiring November 24, 2025;

THAT the applicant must return for a compliance hearing in 18 months, by May 24, 2022, to demonstrate compliance with all of the Board's conditions, and failure to comply with the Board's conditions may result in revocation of the special permit or other appropriate enforcement action;

THAT Lot 28 shall be landscaped in accordance with the Board-approved drawings;

THAT landscaping at the rear lot line shall consist of plants that are rodent-repellant and shall be maintained with appropriate treatments to prevent any harboring of rodents;

THAT the applicant shall employ a landscape architect for guidance on the planting;

THAT dense landscaping shall be maintained in first-class condition with living plants, as illustrated on the Board-approved drawings;

THAT all signage shall comply with C1 zoning district regulations;

THAT there shall be no change in the operator of the subject eating and drinking establishment without prior approval of the Board;

THAT the menu board speakers shall be maintained at levels that are inaudible beyond the property line;

THAT the lumens level shall be zero ("0.00") at the property line;

THAT management must place multiple signs throughout the parking lot which state "Turn radio off" and "Respect Your Neighbor";

THAT management must ensure that no loud music is played by patrons waiting in the drive-thru between 7 p.m. and 7 a.m.;

THAT the site must be kept free of debris and graffiti at all times;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-188-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 May 24, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief



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granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department.

Adopted by the Board of Standards and Appeals, November 9, 2020.

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## 2017-317-BZ

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district. PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to March 22-23, 2021, at 10 A.M., for adjourned hearing.

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## 2019-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Rimani Realty LLC, owner.

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for adjourned hearing.

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## 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 28<sup>th</sup> Street, Block 8791, Lot 120, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 25, 2021, at 10 A.M., for adjourned hearing.

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## 2019-196-BZ

APPLICANT – Eric Palatnik, P.C., for Jane Goldberg, owner.

SUBJECT – Application July 22, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*La Casa Day Spa*) contrary to ZR §42-10. M1-5M zoning district.

PREMISES AFFECTED – 41 East 20<sup>th</sup> Street, Block 849, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020, at 10 A.M., for adjourned hearing.

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## 2019-261-BZ

APPLICANT – Law Office of Lyra J. Altman, for 956-964 LLC, owner.

SUBJECT – Application September 10, 2019 – 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.

PREMISES AFFECTED – 960 East 23<sup>rd</sup> Street, Block 7586, Lot 71, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 14-15, 2020. At 10 A.M., for decision, hearing closed.

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## 2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for adjourned hearing.

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## 2019-271-BZ

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless c/o Amato Law Group, PLLC, for 3708 Hylan Boulevard Corp., owner.

SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, Block 5190, Lot 85, Borough of Staten Island.

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## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for adjourned hearing.

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### 2019-280-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Chelsea Park Corporation, owner.

SUBJECT – Application November 1, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (*SLT*) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies’ Mile Historic District.

PREMISES AFFECTED – 137 Fifth Avenue, Block 00849, Lot 0002, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to December 14-15, 2021, at 10 A.M., for continued hearing.

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### 2020-35-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for 4201 Main Street LLC, owner.

SUBJECT – Application April 15, 2020 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C1-2/R6 and R6 zoning district.

PREMISES AFFECTED – 136-18 Maple Avenue, Block 5135, Lot 3, Borough of Queens.

## COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 14-15, 2020. At 10 A.M., for decision, hearing closed.

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## REGULAR MEETING

**MONDAY-TUESDAY AFTERNOON  
NOVEMBER 9-10, 2020, 2:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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## ZONING CALENDAR

### 2019-278-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 9201 Fith LLC, owner.

SUBJECT – Application October 21, 2019 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District.

PREMISES AFFECTED – 9201 5<sup>th</sup> Avenue, Block 6109, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to February 8-9, 2020 at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 105, Nos. 46-48

December 11, 2020

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90-91-BZ	630-636 City Island Avenue, Bronx
114-07-BZ	7-05 152 <sup>nd</sup> Street, Queens
281-09-BZ	246 Spring Street, Manhattan
343-12-BZ	570 East 21 <sup>st</sup> Street, Brooklyn
120-13-BZ	1815 Forest Avenue, Staten Island
2017-261-BZ	527 East New York Avenue, Brooklyn
2018-30-A	40 Flatbush Avenue Extension, aka 11-43 Chapel Street, Brooklyn
2018-170-A	51-03 Van Dam Street, Queens
2020-40-A	139-141 Orchard Street, Manhattan
2018-102-A	241 Grand Street, Brooklyn
2020-56-A	58-60 West 39 <sup>th</sup> Street, Manhattan
2017-272-BZ	10-19 46 <sup>th</sup> Road, Queens
2018-66-BZ	118 West 72 <sup>nd</sup> Street, Manhattan
2019-74-BZ	112-51 Northern Boulevard, Queens
2019-201-BZ	285 Grand Street, Manhattan
2020-13-BZ	71 Smith Street (140 Schermerhorn Street), Brooklyn
2020-20-BZ	245 Park Avenue, Manhattan
2020-31-BZ	100 William Street, Manhattan
2018-142-BZ	204-23 46 <sup>th</sup> Road, Queens
2019-265-BZ	35 Giffords Lane, Staten Island
603-71-A	35 Giffords Lane, Staten Island
2019-292-BZ	41-62 Bowne Street, Queens
2019-296-BZ	84 Frankline Street, Manhattan

Afternoon Calendar .....491

**Affecting Calendar Numbers:**

2019-162-BZ	3336-3338 Bedford Avenue, Brooklyn
2019-277-BZ	81-04 166 <sup>th</sup> Street, Queens
2020-14-BZ	34-10 12 <sup>th</sup> Street, Queens
2020-19-BZ	144-27 39 <sup>th</sup> Avenue, Queens
2020-22-BZ	33-12 36 <sup>th</sup> Avenue, Queens
2020-23-BZ	28-07 Jackson Avenue, Queens
2020-38-BZ	22-18 Jackson Avenue, Queens

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# DOCKETS

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New Case Filed Up to November 30-December 1, 2020  
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**2020-86-BZ**

15 Parkville Avenue, Block 5441, Lot(s) 22, 23, 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 and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §44-42. M1-1 and R5 zoning district. M1-1 and R5 district.

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**2020-87-BZ**

30 West 32nd Street, Block 00833, Lot(s) 0061, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district. C6-4 district.

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**2020-88-BZ**

315 Berry Street, Block 2430, Lot(s) 0002, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-14) to permit the construction of an electric utility substation (UG 6D) on the roof of an existing building contrary to ZR §22-10. R6 zoning district. R6 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**JANUARY 25-26, 2021, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, January 25, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday January 26, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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**SPECIAL ORDER CALENDAR**

### 55-45-BZ

APPLICANT – Carl A. Sulfaro, Esq., for John Passarella, owner; Kingsland Service Station, LLC, lessee.  
SUBJECT – Application March 25, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) (Spirit) with accessory automotive repair which expired on February 27, 2019. C2-4/R6B zoning district.  
PREMISES AFFECTED – 63 Kingsland Avenue (f/k/a 51-61 Kingsland Avenue), Block 2866, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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### 169-49-BZ

APPLICANT – Rampulla Associates Architect, LLP, for 5270 Amboy Road, LLC, owner.  
SUBJECT – Application April 20, 2020 – Amendment (§11-412) to permit the enlargement of an accessory repair establishment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). R3A Special South Richmond District within the Lower Density Growth Management Area.  
PREMISES AFFECTED – 5270 Amboy Road, Block 6523, Lot 80, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### 1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs Inc., owner.  
SUBJECT – Application July 8, 2020 – Extension of Term of a previously approved variance permitting the operation of an eating and drinking establishment which expired on July 7, 2020, Extension of Time to Obtain a Certificate of Occupancy which expired on March 25, 2015; Waiver of the Board's Rules of Practice and Procedures. R8B zoning district.

PREMISES AFFECTED – 234 East 58<sup>th</sup> Street, Block 1331, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**92-99-BZIII, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ,**

### 102-99-BZ

APPLICANT – Goldman Harris LLC, for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant's time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 zoning district.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 98-51, 98-33, 98-19 64<sup>th</sup> Road, Block 2101, Lot (s)0001, 0016, 0024, 0029, 0021, 0015, Borough of Queens.

**COMMUNITY BOARD #6Q**

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### 294-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 821 Fifth Avenue Investors IV LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application December 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox) which expires on May 9, 2020. C5-2.5 and C5-3 Midtown Special Purpose District – Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 521 5<sup>th</sup> Avenue, Block 1278, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47<sup>th</sup> Avenue, Block 00028, Lot(s) 12,15,17,18,121, Borough of Queens.

**COMMUNITY BOARD #2Q**

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### 2016-1185-A

APPLICANT – Pryor Cashman LLP, for MBAR Realty, LLC and MBAR Realty #2 LLC, owner; Treasure Island of Asbury Park Self Storage LLC, lessee.

SUBJECT – Application October 9, 2020 – Amendment to extend the time to obtain "all DOB related agency application(s) filed in connection with the authorized use and/ bulk will be signed off by DOB and all other relevant agencies by November 1, 2020.

PREMISES AFFECTED – 45-14 and 45-40 51<sup>st</sup> Street, Block 2283, Lot(s) 53,54, Borough of Queens.

**COMMUNITY BOARD #2Q**

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# CALENDAR

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## ZONING CALENDAR

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### 2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/Special Ocean Parkway District.

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### 2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust U/W Article Third, owner.

SUBJECT – Application June 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy for 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 July 23, 2020. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD # 11BK**

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## APPEALS CALENDAR

### 2020-3-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lorenzo McFarlane, owner.

SUBJECT – Application January 10, 2020 – Proposed development of a two-family residential building located partially inside the bed of the street contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 142-18 Hook Creek Boulevard, Block 13616, Lot 105, Borough of Queens.

**COMMUNITY BOARD #13Q**

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### 2020-24-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Sela 27<sup>th</sup> Street LLC, owner.

SUBJECT – Application March 20, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 39-35 27<sup>th</sup> Street, Block 397, Lot 2, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### 2019-192-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 Harrison Place Partners LLC, owner.

SUBJECT – Application July 18, 2019 – Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 16 Harrison Place, Block 3093, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### 2019-200-BZ

APPLICANT – Sheldon Lobel, P.C., for 83-32 Parsons Blvd LLC, owner; Queensfitness dba Orangetheory Fitness

SUBJECT – Application July 26, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*OrangeTheory Fitness*) located on a portion of the first floor and cellar of an existing building contrary to ZR §31-10. C2-2/R6B and C8-1 zoning districts.

PREMISES AFFECTED – 41-19 Bell Boulevard, Block 6290, Lot 5, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### 2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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### 2019-301-BZ

APPLICANT – Eric Palatnik, P.C., for 26 ARISTA Realty LLC, owner.

SUBJECT – Application December 3, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (CrossFit 718) contrary to ZR §41-10. M1-2D zoning district.

PREMISES AFFECTED – 148 26<sup>th</sup> Street, Block 657, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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# CALENDAR

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**2020-17-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for GGP Staten Island Mall, LLC, for 24 Hour Fitness USA, Inc. dba 24 Hour Fitness, lessee.

SUBJECT – Application February 12, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (24 Hour Fitness) to be located on the first floor of a one-story commercial building contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 280 Marsh Avenue, Block 2400, Lot 300, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**2020-25-BZ**

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino, owner.

SUBJECT – Application March 27, 2020 – Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district.

PREMISES AFFECTED – 142-30 13<sup>th</sup> Avenue, Block 4435, Lot 27, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**2020-63-BZ**

APPLICANT – Jay Goldstein, Esq., for Gennady Belenkiy, owner.

SUBJECT – Application August 7, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family home contrary to underlying bulk requirements. R3-2 zoning district.

PREMISES AFFECTED – 1718 East 28<sup>th</sup> Street, Block 6810, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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*Margery Perlmutter, Chair/Commissioner*



# MINUTES

**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
NOVEMBER 30-DECEMBER 1, 2020, 10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

**SPECIAL ORDER CALENDAR**

**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** – Application granted on condition.

**THE VOTE** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**THE RESOLUTION** –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which legalized the enlargement of an existing gasoline service station (Use Group (“U.G.”) 16) with convenience store and canopy, and expired on June 27, 2020.

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 November 19, 2019, February 4, 2020, and July 13, 2020, and then to decision on August 10, 2020. The Board reopened the application with a continued hearing on November 9, 2020, and then again to decision on November 30, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 9, the Bronx, recommends approval of this application.

The Premises are located on the northeast corner of Metcalf Avenue and Watson Avenue, within an R6 zoning district, in the Bronx. With approximately 149 feet of frontage along Metcalf Avenue, 89 feet of frontage along Watson Avenue, 16,886 square feet of lot area, the Premises are occupied by an existing gasoline service station and accessory convenience store (2,600 square feet of floor

area).

The Board has exercised jurisdiction over the Premises since July 7, 1953, when, under BSA Cal. No. 192-53-BZ, the Board granted a variance to permit the erection and maintenance of a business building (stores), nearer to the street line than is permitted, and to permit the parking of patrons cars on unbuilt portions of the lot, on condition that the building not exceed one story in height and for a depth, as proposed, of 100 feet; the space on the plot for a depth of 70’ by 100’ at the north be left unbuilt upon and be properly fenced with woven wire fence not less than 5’-6” in height, with no openings therein except one approximately 3’ in width for access for maintenance only; such space be landscaped with suitable material in accordance with a plan for such landscaping to be filed with the Board for further consideration; in all other respects the building and occupancy comply with the requirements of a local retail district; all permits be obtained and all work completed within one year; and, the term of the variance be for 20 years, to expire July 7, 1973.

On May 18, 1953, under BSA Cal. No. 192-53-BZ, the Board amended the variance to permit the building to be constructed to a depth of 70’.

On May 24, 1955, under BSA Cal. No. 192-53-BZ, the Board extended the time to obtain permits and complete work for one year, by May 24, 1956.

On January 29, 1957, under BSA Cal. No. 192-53-BZ, the Board granted a variance, for a term of 15 years, to permit the Premises to be occupied as a gasoline service station and accessory uses, on condition that the plot be leveled substantially to the grade of the service roads of the parkway, known as Metcalf Avenue at the corner of Watson Avenue, arrange and constructed as indicated on plans filed with the application; the accessory building be of face brick on all sides, have no cellar and be of the design and arrangement as indicated on such plans; along the interior lot lines to the east and north there be erected a wall of masonry agreeing with that of the accessory building, not less than 5’-6” in height and properly coped; along the building line of Metcalf Avenue there be erected a concrete base and an iron picket fence to a similar height of 5’-6” continuing along Metcalf Avenue to the break near Watson Avenue, where shown; curb cuts be restricted to two on Watson Avenue, not over 30 feet in width each, located where shown with no portion nearer than 5 feet to a side lot line as prolonged; pumps be of a low approved type, erected not nearer than 15 feet to a street building line; tanks be restricted to 12 550-gallon approved gasoline storage tanks; along the walls to the north and west there be suitable planting, including trees, as shown in the spaces not less than five feet wide, properly protected by concrete curbing at least six inches wide and eight inches high; the balance of the site where not occupied by accessory building, planting, and pumps be paved with asphalt or concrete; such portable firefighting appliances be maintained as the fire commissioner directs; signs be restricted to a permanent sign attached to the façade of the accessory building, excluding all roof signs and temporary signs, but permitting

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# MINUTES

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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 over the northeast line of the Premises not more than four feet; the new curb cuts opposite the entrances to Watson Avenue and the sidewalks and curbing abutting the Premises be reconstructed or repaired to the satisfaction of the borough president; under section 7i there may be minor repairing with hand tools only for adjustments maintained solely within the accessory building; under section 7h there may be parking of cars awaiting service, arrange so as not to interfere with the service of the station; all permits required be obtained, including a certificate of occupancy, and all work completed within one year.

On February 11, 1958, March 25, 1959, March 1, 1960, and May 1, 1962, under BSA Cal. No. 192-53-BZ, the Board extended the time to obtain permits and complete the work for periods of one year.

On October 16, 1962, under BSA Cal. No. 192-53-BZ, the Board granted a variance to permit, for a term of 20 years, the relocation and reduction in area of the accessory building and the number of pump islands to a gasoline service station with accessory uses of lubrication, car wash, minor auto repairs, and the parking and storage of motor vehicles awaiting service, and one additional curb cut, on condition that the work conform to drawings filed with the application; all laws, rules, and regulations applicable be complied with; the permits be obtained, work completed, and a certificate of occupancy obtained within one year.

On November 13, 1963, under BSA Cal. No. 192-53-BZ, the Board extended the time to complete work and obtain a certificate of occupancy for one year.

On June 30, 1964, under BSA Cal. No. 192-53-BZ, the Board further amended the variance to permit the installation of two curb cuts on Metcalf Avenue and rearrangement of the gasoline storage tanks and pumps.

On June 27, 2000, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to legalize and enlarge an existing gasoline service station with convenience store and canopy, on condition that all work substantially conform to drawings as they apply to the above noted, filed with the application; the term of the variance be for 20 years, to expire on June 27, 2020; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and, substantial construction shall be completed in accordance with Z.R. §72-23.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than one year before the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that no changes have been

made to the Premises since the Board's approval, except that the Premises now include air towers, automobile vacuums, and a public telephone along the easterly lot line, and an ice machine in front of the accessory building.

Over the course of hearings, the Board expressed concern over the conditions of the Premises, specifically with regard to the presence of illegal banners, poorly maintained landscaping and fencing, the presence of storage drums on site, and excessive trash and debris. Additionally, the Board questioned whether the ice machine, vacuums, and air tower at the Premises would pose adverse noise impacts to nearby residential properties. In response, the applicant demonstrated removal of the ice machine, vacuums, illegal signage, banners and storage drums, engaged in a trash and recycling pickup program, and commits to maintain the Premises, landscaping, and fencing in first-rate condition. Further, the applicant demonstrated that an air tower at the Premises is required pursuant to applicable state and local regulations; accordingly, the Board permitted the presence of an air tower at the Premises.

By letter dated December 1, 2018, the Fire Department states that the Premises are current with respect to permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and fire suppression (dry-chemical) system, expiring November 2019. By correspondence dated October 28, 2020, the Fire Department states that a review of their records indicates that the Premises FDNY permit has expired, but test orders have been issued. Due to the current public health crisis, the Department has been unable to schedule testing for the Premises. Based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amends* the resolution, dated June 27, 2000, so that as amended this portion of the resolution shall read: "to extend the term of the variance for one year and six months, to expire on May 30, 2022; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received September 15, 2020- Eight (8) sheets'; and *on further condition*:

THAT landscaping shall be installed as per BSA-approved plan, by spring 2021;

THAT all asphalt, fencing, acoustical fencing, walls, and landscaping shall be maintained in first rate condition, and replaced as needed;

THAT the Premises shall be maintained free of debris at all times;

THAT dumpsters shall be kept in an enclosure at all times;

THAT minimum four times weekly trash pickup shall occur;

# MINUTES

THAT no storage of chemical drums shall be permitted on site;

THAT lighting shall be directed down and away from nearby residential properties, with zero (“0.0”) light spread on adjacent residential lots;

THAT signage shall comply with C1 signage regulations;

THAT no long-term parking is permitted at the Premises;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 85-99-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by May 30, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 30, 2020.

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## 303-13-BZ

APPLICANT – Schoeman Updike Kaufman Gerber LLP, for SoBro Development Corporation (Lots 7&8), owner; SoBro Development Corporation (Lot 6), lessee.

SUBJECT – Application March 6, 2020 – Amendment of a previously approved Variance (§72-21) to allow a new mixed-use building consisting of residential units and community facility space. The Amendment seeks additional dwelling units.; Extension of Time to Complete Construction which expired on December 15, 2019; Waiver of the Board’s Rules of Practice and Procedure. R6 & C1-4 zoning districts.

PREMISES AFFECTED – 506-510 Brook Avenue, Block 2274, Lot(s) 6, 7, 8, Borough of Bronx.

## COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 7, 2020, acting on DOB Application No. 220338304 reads in pertinent part: “Prior BSA variance Cal

# 303-13-BZ, issued December 15, 2015 has expired. Proposed building with 40 dwelling units exceeds the number of dwelling units (36) in the stamped approved plans accompanying BSA resolution of December 15, 2015. Refer to BSA for renewal and amendment of prior variance.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of time to complete construction of a variance previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction of a new mixed-use building consisting of residential units and community facility space and expired on December 25, 2019, and amendment of the previously granted variance.

A public hearing was held on this application on October 6, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 1, the Bronx, recommends approval of this application.

The Premises are located on the southeast corner of Brook Avenue and East 148th Street, within an R6 (C1-4) zoning district, in the Bronx. With approximately 75 feet of frontage along Brook Avenue, Lot 8 has approximately 95 feet of frontage along East 148th Street, and Lots 6 and 7 each have a depth of 98 feet, 7,275 square feet of lot area, the Premises are occupied by an existing five-story mixed-use residential and commercial building and two vacant lots.

The Board has exercised jurisdiction over the Premises since December 15, 2015, when, under the subject calendar number, the Board granted a variance to permit the construction of a mixed-used residential and community facility use building, on condition that the following be the bulk parameters of the building: maximum lot coverage of 82 percent, maximum residential floor area of 32,544 sq. ft., and maximum residential floor area of (“FAR”) of 4.47, as indicated on the BSA-approved plans; any change in ownership, operator, or control of the building require the prior approval of the Board; a construction protection plan developed in accordance with DOB’s “Technical Policy Procedure Notice # 10/88” be put in place for all historic resources within 90 feet of the proposed construction and the plan; substantial construction be completed in accordance with Z.R. § 72-23; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); DOB will not issue a certificate of occupancy prior to DEP’s approval of the Remedial Closure Report; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The time to complete construction having expired, the applicant now seeks an extension of time to complete construction and amendment of the previously granted variance. Because this application was filed less than two

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# MINUTES

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years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to Section 1-14.2 of the Board's Rules of Practice and Procedures, of Section 1-07.3(c)(2), of the Board's Rules to permit the filing of this application.

The applicant proposes to amend its original grant by increasing the number of dwelling units from 36 to 40, contrary to Z.R. § 23-22; and decrease the previously approved FAR from 4.47 to 4.28, contrary to Z.R. § 22-145. The applicant submits that these changes would not modify the previously approved bulk envelope, building height, or lot coverage. The applicant represents that these changes are minimal and are necessary due to changes in the NYC Housing Preservation Department's ("HPD") design guidelines and HPD's requirements for deeper affordability.

The applicant represents that the variance as amended still reflects the minimum necessary, as per Z.R. § 72-21(e). Because the applicant is a not-for profit entity, the applicant is not required to submit financial information about the proposed project; however, in support of its contention that the requested variance is the minimum necessary, the applicant presents a summary of three financial factors including (1) increased construction costs; (2) deep project affordability; and (3) inclusion of a non-income-generating superintendent's apartment. To begin, the applicant states that the original quote may have been insufficient to complete the project at that time due to the early nature of project budgeting and scoping and, over time, the increase in New York City construction, labor rates and productivity, material prices, and competitive condition of the marketplace have had a negative impact on the financial viability of the minimum variance previously approved. Additionally, the applicant notes that it must comply with HPD's Design Guidelines which permit smaller units and allow for more units within the same bulk envelope. Finally, unlike the currently proposed project, the original application did not include an on-site superintendent's unit, which resulted in a loss of income for the project with 35 rent producing units instead of 36.

At hearing, the Board expressed concerns on the clarity of the project's funding streams; the status of environmentally related violations at the Premises; and that the submitted drawings do not include all the materials to be used on all of the building façades. In response, the applicant elaborated on its proposed affordability mix, the current proposed affordability mix, and how HPD's programs have changed to affect its funding. The applicant further elaborated on its progress of settlement with New York City for violations and submitted revised plans which include note all of the materials used on the façades.

Based upon its review of the record, the Board has determined that the requested rule waiver, extension of time to complete construction, and amendment to the previously granted variance are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures *amends* the resolution, dated December 15,

2015, so that as amended this portion of the resolution shall read: "to *permit* an increase in the number of dwelling units from 36 to 40 and decrease the previously approved FAR from 4.47 to 4.28 and to *extend* the time to complete construction by four years and six months, to expire on June 8, 2025; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received November 2, 2020- Forty-two (42) sheets'; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum residential floor area of 32,544 sq. ft., and maximum residential floor area of 4.47, as indicated on the BSA-approved plans;

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT this approval of the variance, as amended, assumes development of a project of income levels for dwelling units of 40 percent to 80 percent of area median income, stated in the December 15, 2015 BSA resolution;

THAT a construction protection plan developed in accordance with DOB's 'Technical Policy Procedure Notice # 10/88' shall be put in place for all historic resources within 90 feet of the proposed construction and the plan;

THAT DOB shall not issue a certificate of occupancy prior to DEP's approval of the Remedial Closure Report;

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. 303-13-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 June 8, 2025;

THAT substantial construction be completed in accordance with Z.R. § 72-23;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other 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 30, 2020.

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# MINUTES

## 551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.  
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for continued hearing.

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## 334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.  
SUBJECT – Application August 23, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 24, 2019. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for continued hearing.

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## 90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming uses with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment proposes to occupy a 1,576 square foot retail store with a new eating and drinking establishment, divide an existing residential dwelling into two dwelling units and allow 35 accessory attended parking spaces in the rear; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

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## 114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the

roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152<sup>nd</sup> Street, Block 4531, Lot 35, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to February 22-23, 2021, at 10 A.M., for continued hearing.

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## 281-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tarnoff for CIM Group LP, owner.

SUBJECT – Application February 11, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the fifth and sixth floors of a 42-story building which expired on February 23, 2020. M1-6 Special Hudson Square District.

PREMISES AFFECTED – 246 Spring Street, Block 491, Lot(s) 1201-1594; 1101-113, Borough of Manhattan.

### COMMUNITY BOARD #2M

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 January 25-26, 2021, at 10 A.M., for decision, hearing closed.

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## 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 21<sup>st</sup> Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 January 25-26, 2021, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 120-13-BZ

APPLICANT - Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to February 22-23, 2021, at 10 A.M., for continued hearing.

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## 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

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 January 25-26, 2021, at 10 A.M., for decision, hearing closed.

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## 2020-56-A

APPLIANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for H Hotel LLC, owner.

SUBJECT – Application July 14, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. M1-6 and C5-3 Special Midtown District.

PREMISES AFFECTED – 58-60 West 39<sup>th</sup> Street, Block 00840, Lot 0081, 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 January 25-26, 2021, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 2018-30-A

APPLICANT – Tarter Krinsky & Drogin LLP, for 40 Flatbush Avenue Associates LLC, owner; Outfront Media LLC, lessee.

SUBJECT – Application March 2, 2018 – Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 40 Flatbush Avenue Extension aka 11-43 Chapel Street, 126-146 Concord Street, Block 118, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 31, 2018 (the “Determination”), states, in part:

We have reviewed your responses to our deficiency notices for the advertising sign referenced above. Unfortunately, we find the submitted documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration for the reasons stated below.

The advertising sign location is within 200 feet and within view of a public park of 1/2 acre or more - Trinity Park and McLaughlin Park. In our previous notices, we advised that evidence submitted to us indicated that the “Howard Clothes” sign, displayed prominently on the roof sign structure for several decades, was an accessory sign because that entity was conducting business on the subject zoning lot. In your responses, evidence was not submitted to rebut this assertion. Thus, we cannot approve the requested advertising sign use because it was not legally established.

This is an appeal for interpretation, under Z.R. § 42-55, brought by Outfront Media LLC (the “Appellant”), alleging errors in the Determination pertaining to whether the sign located on the roof at 40 Flatbush Avenue Extension in Brooklyn has non-conforming use status.

A public hearing was held on this application on August 11, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area.

The Premises are improved with a ten-story building which contains a sign on its roof measuring approximately 3,360 square feet, in a C6-2 zoning district, in Brooklyn.

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In support of this appeal, the appellant argues that the subject sign is a legally established, non-conforming use that the appellant is entitled to operate at its current size. More specifically, the applicant states that the existence of the sign dates back to 1921 and that its presentation of permit documents, photographs and leases supports this contention, and therefore, the sign predates the June 1, 1968 deadline for signs of unlimited size, height, and surface area as set forth in Z.R. § 42-55(c). Furthermore, the appellant argues that the sign achieved legal non-conforming use in 2001, when the building was zoned in an M1-1 zoning district and the adoption of the 2001 amendments permitted signage of unlimited size and height.

In support of its 2018 determination, DOB presents the following: a 1940 zoning Resolution amendment prohibiting advertising near parks; a 1944 *New York Times* article about the acquisition of the subject building by Howard Clothes; an image of the subject building in 1945, which does not have the subject sign on the roof; an image of the subject building in 1949, which shows its use as accessory to the Howard's Clothes; and a list from a 1948 DOB docket book referencing the subject sign. DOB claims that this evidence further supports its determination that the subject sign was improperly registered with DOB because the appellant has continually failed to provide evidence that the sign is a lawful, non-conforming advertising sign. More specifically, DOB states that the sign cannot be a lawful, non-conforming advertising sign because (a) it is within 200 feet of a public park; (b) was erected after the 1940 prohibition; (c) would have been accessory during the period in which Howard's Clothes occupied the Premises; and (d) there is not applicable grandfathering provision in Z.R. § 42-55.

At hearing, in regards to the appellant's arguments, the Board expressed concerns about the applicability of Z.R. § 42-55(c) as opposed to Z.R. § 42-55(a) and (b); appellant's failure to provide a better record of the subject building's history, the subject sign's history, and maps that clearly demonstrate the distance of the park to the sign and the sign's visibility from the park; and appellant's evidence that the sign was erected before 1940 and argument that it meets the standard established in Z.R. § 42-55. The Board also noted the appellant's history of delaying its scheduled appearances due to its failure to timely and completely respond to the Board's comments to the deficiencies in its application.

In regard to DOB's submissions, at hearing, the Board asked for clarification as to how DOB was measuring the distance from the sign to the park and whether its measurements was to sign's lighting or its text; whether DOB's statement that signs permitted prior to 1961 are illegal unless they can prove they were erected prior to 1940, contradicts Z.R. § 42-55(c); and an absence of evidence as to when Howard's Clothes abandoned its lease in the building.

The Board posed these questions and requested that both the appellant and DOB respond to them in their next submission.

However, by correspondence, dated October 7, 2020,

the appellant requested to withdraw the application without prejudice.

*Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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## 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** – Appeal denied.

THE VOTE –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

THE RESOLUTION –

The decisions of the Department of Buildings (“DOB”), dated October 1, 2018, acting on applications to register two advertising signs (collectively, the “Determination”), read in pertinent part: “The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter.”

This is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“Z.R.” or the “Zoning Resolution”) and Section 666 of the New York City Charter, brought on behalf of Clear Channel Outdoor, Inc. (“Appellant”), alleging errors in the Determination regarding whether the existing advertising signs constitute legal non-conforming uses.

For the reasons that follow, the Board denies this appeal.

### I.

The Premises are located on a block bounded by Van Dam Street, the Queens Midtown Expressway, and 34th Street, in an M1-3 zoning district, in Queens. They have approximately 149 feet of frontage along Van Dam Street, 106 feet of frontage along the Queens Midtown Expressway, 213 feet of frontage along 34th Street, 7,250 square feet of lot area, and are improved with a three-story, with mezzanine, commercial building (the “Building”).

On the roof of the Building sit two advertising signs in a V formation (the “Signs”): one facing west toward Van Dam Street (the “Western Sign”) and one facing east toward

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34th Street (the “Eastern Sign”). The face of the Western Sign measures 60 feet in width by 20 feet in height, and the face of the Eastern Sign measures 48 feet in width by 20 feet in height.

On October 1, 2018, DOB issued the Determination, rejecting registration of the Signs as legal non-conforming advertising signs, and Appellant commenced this appeal in October 2018.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

A public hearing was held on this appeal on May 18, 2020, after due notice by publication in *The City Record*, with continued hearings on August 10, 2020, and November 9, 2020, and then to decision on November 30, 2020.

### III.

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, Z.R. § 72-11. 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*.

As discussed herein, the Board has considered (A) all of the parties’ arguments on appeal, including those summarized below, and ultimately finds that (B) Appellant has failed to demonstrate that the Signs constitute legal non-conforming advertising signs in accordance with Sections 42-55 and 52-83 of the Zoning Resolution.

#### A.

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.

#### Appellant

Appellant contends that this appeal should be granted because the Determination is improper and premature and because the Signs do constitute legal non-conforming uses.

First, Appellant alleges that the Determination is premature because Appellant “fully complied with the prior deficiency notice and DOB did not issue a later deficiency notice identifying specific issues,” so Appellant contends it has not had sufficient opportunity to cure inadequacies in its registration applications for the Signs.

Second, Appellant claims the Signs are legal non-conforming uses as “confirmed by the permit documents, photographs and lease records dating back to 1940.” Appellant claims the Signs are entitled to “unlimited size, height and surface area as set forth in ZR 42-55(c).” more particularly, Appellant claims a reference to “billboard on the roof” in a 1966 Certificate of Electrical Inspection for the Premises means that the Signs existed before 1968, and, because the Signs’ current surface areas do not exceed 1,200 square feet, their legal “non-conforming use status commences as of November 1, 1979.” Appellant further contends that 1978 photographs from the New York State Department of Transportation show two advertising signs on

the roof of the Premises.

Third, Appellant asserts that “any modifications to the structures or variations observed by the DOB did not result in an increase in the degree of non-conformity of the advertising signage,” though Appellant “acknowledge[s] . . . that it appears that the surface area of the east-facing sign increased at some point.” Appellant asserts that, assuming “there were some changes made to the supporting structure on which the advertising signs are displayed (for example, the number and placement of structural supports), in the absence of changes to the sign face itself, we submit that such changes to the structure outside of the area on which the sign copy is displayed would not affect the non-conforming use status of the advertising signage” under the Zoning Resolution.

Based on the foregoing, Appellant asserts that this appeal should be granted.

#### DOB

DOB urges that this appeal be upheld because Appellant has not demonstrated that the Signs qualify as legal non-conforming advertising signs that are allowed to be within 200 feet and within view of the Long Island Expressway, a designated arterial highway, in accordance with Sections 42-55 and 52-83 of the Zoning Resolution.

At the outset, DOB disputes Appellant’s claim that this appeal is premature or that the Determination was improper. DOB notes that Appellant needs to demonstrate—with competent evidence—that the Signs are entitled to registration today as legal non-conforming advertising signs but that Appellant has failed to do so, notwithstanding that DOB allowed Appellant more than five years to produce such evidence. Furthermore, DOB notes that its consideration of Appellant’s sign registration applications comported with the New York City Construction Codes and Rule 49, given that DOB provided Appellant with notices of deficiencies in 2013 and allowed Appellant the opportunity to provide additional documentation. However, Appellant’s response further failed to demonstrate the Signs’ lawfulness resulting in registration rejections in 2014 and then in 2018, allowing Appellant to file this appeal with the Board.

As to the merits of this appeal, DOB notes that Section 42-55(c) of the Zoning Resolution confers “legal non-conforming use status pursuant to Section 52-83 (Non-conforming Advertising Signs)” upon advertising signs “erected, structurally altered, relocated or reconstructed prior to June 1, 1968” and “November 1, 1979.” DOB interprets this provision to allow qualifying signs to continue as non-conforming uses but to incorporate the restriction in Section 52-83 that they not be structurally altered, reconstructed, or replaced after the date upon which legal non-conforming use status was conferred by Section 42-55(c). DOB notes that the text of Section 52-83 explicitly provides this qualification by stating “except as otherwise provided in . . . 42-55.” Accordingly, assuming the Signs had been established as legal non-conforming uses as of 1979, they may not thereafter be structurally altered, reconstructed, or replaced.

Here, DOB posits that evidence in the record



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demonstrates that the Signs have indeed been unlawfully replaced, structurally altered, or reconstructed; have forfeited any legal non-conforming use status they may have obtained; may not be returned to their previous dimensions since such alteration would necessarily result in further prohibited structural alterations or reconstruction; and thus must terminate.

The Eastern Sign, according to DOB, has increased in dimensions and is supported by a new sign structure. DOB bases this assertion on a comparison between photographs from approximately 40 years ago and from today. Specifically, DOB notes that the width of the Eastern Sign has approximately doubled to a width of about 48 feet, which is corroborated by representations in a 1998 application to “refurbish [the] existing roof sign structure” that resulted in an invalid building permit (later revoked in 2011). DOB further compares current photographs of the Eastern Sign to photographs taken in 1978 by the New York State Department of Transportation, which further corroborate the increase in width of the sign face and reveal the addition of a new structure with structural elements directly connecting the Eastern Sign to the roof of the Building along with an increase in height. Accordingly, because the Eastern Sign was structurally altered, relocated, or reconstructed after 1979 and because any attempt to restore it to its previous dimensions would necessarily result in further unlawful structural alterations or reconstruction, the Eastern Sign has lost any legal-conforming use status it may once have had and must terminate. *See* Z.R. §§ 42-55 and 52-83.

The Western Sign, by DOB’s analysis, is also larger in dimensions and supported by new structural elements. In particular, DOB notes that comparing 1978 photographs from the New York State Department of Transportation with current photographs reveals that, in 1978, the Western Sign’s face did not span the full width of its supporting structure, but today the Western Sign does. Additionally, these photographs reflect that the height of the Western Sign has also increased. Accordingly, because the Western Sign was structurally altered, relocated, or reconstructed after 1979 and because any attempt to restore it to its previous dimensions would necessarily result in further unlawful structural alterations or reconstruction, the Western Sign has also lost any legal-conforming use status it may once have had and must terminate. *See* Z.R. §§ 42-55 and 52-83.

Based on the foregoing, DOB requests that this appeal be denied and the Determination upheld.

## B.

As discussed herein, the Board ultimately finds that Appellant has not demonstrated that the Signs constitute legal non-conforming advertising signs based on the applicable standards of Sections 42-55 and 52-83 of the Zoning Resolution and based on the evidence in the record that the Signs were unlawfully structurally altered or reconstructed after 1979.

The Zoning Resolution generally specifies that a “non-conforming use” be “lawful” before a zoning change with which the use no longer complies. Z.R. § 12-10

(nonconformity definition). It then subjects these “non-conforming uses” to certain limitations “in order to provide a gradual remedy for existing undesirable conditions . . . . While such uses are generally permitted to continue, these regulations are designed to restrict further investment in such uses, which would make them more permanent establishments in inappropriate locations.” Z.R. § 51-00 (purpose of regulations governing non-conforming uses).

Since 1940, the Zoning Resolution has prohibited advertising signs within 200 feet and within view of the City’s arterial highways. *See* Z.R. § 42-55. 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).

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” status to existing illegal advertising signs 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). Accordingly, unlike general non-conforming uses, certain previously illegal advertising signs were conferred “legal non-conforming use” status by the 1979 text amendment. Z.R. § 42-55.

Rather than conferring conformity to these illegal advertising signs, the text of the Zoning Resolution merely confers “legal non-conforming use” status—thereby subjecting them to the restrictions applicable to non-conforming uses. As DOB notes, the Zoning Resolution specifically bestows this non-conforming use status “pursuant to Section 52-83,” which contains specific restrictions on non-conforming advertising signs. Z.R. § 42-55(c). Among these restrictions are the prohibitions that no non-conforming advertising sign “be structurally altered, reconstructed or replaced” in a manner that would be contrary to the Zoning Resolution’s “Additional Regulations for Signs Near . . . Designated Arterial Highways” in Section 42-55. Z.R. § 52-83. Nor may any advertising sign be “structurally altered, reconstructed or replaced” in a manner that would result in “the creation of a new non-conformity or an increase in the degree of non-conformity of such sign” or “an increase in the surface area of such sign.” Z.R. § 52-83.

Here, Appellant has failed to demonstrate that the Signs are entitled to maintain any “legal non-conforming use” status they may have been conferred in 1979. In particular, the photographic evidence presented by DOB—including 1978 photographs from the New York State Department of Transportation, historic aerial photographs, and publicly available recent photographs—overwhelmingly indicates that both of the Signs have increased in surface area since 1979, directly contrary to the Zoning Resolution’s general restrictions on any non-conforming advertising signs. *See* Z.R. § 52-83.

Additionally, in response to questions from the Board

# MINUTES

at hearing, DOB supplemented its analysis of the evidence in the record to demonstrate further that the structural components for both of the Signs had been modified since 1979. DOB points out, and the Board agrees, that such modifications show that the Signs were both “structurally altered, reconstructed or replaced” in contravention of the Zoning Resolution’s restrictions on non-conforming advertising signs near arterial highways. *See* Z.R. §§ 42-55 and 52-83.

Lastly, the Board finds unpersuasive Appellant’s arguments that the Determination is procedurally defective or somehow not ripe for Board review.

#### IV.

The Board has considered all of the arguments on appeal but finds them ultimately unpersuasive. Based on the foregoing, the Board finds that Appellant has failed to demonstrate that the Signs are entitled to registration as lawful non-conforming advertising signs that comport with Sections 42-55 and 52-83 of the Zoning Resolution, so their use must terminate.

*Therefore, it is Resolved,* that the decisions of the Department of Buildings, dated October 1, 2018, acting on applications to register two advertising signs, shall be and hereby are *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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#### 2020-40-A

APPLICANT – Goldman Harris LLC, for Allen Street Owner LLC, owner.

SUBJECT – Application May 6, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. C4-4A zoning district.

PREMISES AFFECTED – 139-141 Orchard Street, Block 415, Lot(s) 67, 63, Borough of Manhattan.

COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to renew building permits associated with vested rights applications previously granted by the Board.

A public hearing was held on this application on November 10, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood.

The Premises are a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street, within a C4-4A zoning district, in Manhattan. With approximately 87'-9" of width, 127'-3" of depth, and a lot area of approximately 9,799 square feet, the Premises are under construction of a 16-story transient hotel building (the “Building”).

#### I.

On September 29, 2008, the Department of Buildings (“DOB”) issued Permit No. 110251361-EW-OT (the “Foundation Permit”) for excavation and construction of the Building’s foundation and construction on the Building commenced on October 14, 2008; on November 19, 2008, DOB issued New Building Permit No. 104870392-01-NB permitting construction of the Building (collectively, the “Permits”), and determined that the Building would comply with all applicable zoning regulations.

Effective November 19, 2008 (the “Effective Date”), the City adopted the East Village/Lower East Side Rezoning and amended the Zoning Resolution, changing the zoning district from a C6-1 zoning district to C4-4A zoning district, such that the Building does not comply with bulk regulations pertaining to floor area, FAR, building height and setback.

The Board has previously recognized vested rights associated with the Permits. On June 16, 2009, under BSA Cal. No. 311-08-BZY, the Board granted a renewal of all permits necessary to complete construction and an extension of time to complete the required foundations for a term of six months, pursuant to Z.R. § 11-331. The foundation was completed within six months of the Board’s grant and construction proceeded until November 19, 2010, when the Permits lapsed pursuant to Z.R. § 11-332. On March 15, 2011, under BSA Cal. No. 220-10-BZY, the Board granted a further renewal of all permits, as well as all related permits for various work types necessary to complete construction, and an extension of time to complete construction and obtain a certificate of occupancy for one term of two years, pursuant to Z.R. § 11-332. On August 20, 2013, under BSA Cal. No. 220-10-BZY, the Board granted an additional two-year extension to complete construction and obtain a certificate of occupancy, pursuant to Z.R. § 11-332. On January 12, 2016, under BSA Cal. No. 58-15-A, the Board recognized a common-law vested right to complete construction of the Building and reinstated the Permits, as well as all related permits for various work types, for four years.

#### II.

Because the Permits lapsed on January 12, 2020, the applicant now seeks to renew them in order to complete construction in accordance with the common-law doctrine of vested rights.

#### A.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a

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commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner's actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless," *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a "protectible 'property interest' in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license"). Notwithstanding this general framework, "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right," *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

As noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Building in accordance with the New Building Application before the Effective Date.

The Board notes that work completed pursuant to the Permits, lawfully issued prior to the Enactment Date, constituted substantial construction and substantial expenditures as stated or implied in BSA Cal. No. 220-10-BZY and the statutory and common law renewals therefore. Specifically, the Board's August 20, 2013, grant under BSA Cal. No. 220-10-BZY included findings that prior to November 19, 2010, 100 percent of the foundation and seven floors of the superstructure had been completed, along with part of the eighth floor, and that, based on the submission of financial records, construction contracts, copies of cancelled checks and copies of lien waivers evidencing payments, \$4,826,511 had been expended for the development, or 32 percent of the approximate \$15,249,467 cost to complete.

The applicant submitted evidence that, since the Board's extension in 2016, approximately 85 percent of the work on the Building is complete, including: cladding of the entire concrete shell; installation of partial steel framing for the extension on the former tax-lot 61 extension; installation of exterior railings, roofing, high-rise elevators, HVAC, electrical, plumbing, standpipe, fiber optic, and fire alarm risers, HVAC condensers, boilers, and air handling and rooftop units, emergency generator and fuel oil lines and tanks, electrical rough, devices, trim and light fixtures on guestroom floors; all plumbing rough, hot water heaters, and pumps, sprinkler mains, risers and rooftop fire suppression tank, trash chute; all guestroom floors have been framed, sheetrocked and painted; all bathrooms tiled; and permanent electric, water and sewer services were established.

The applicant submits that, since the Board's renewal in 2016, approximately \$20,513,444 has been expended in furtherance of the development of the Building. Accordingly, the record reflects that the owner has continued to incur substantial expenses to further

development of the Building.

The Board recognized in 2016 that, if the right to continue construction of the Building were denied, the owner would suffer serious loss—that is, substantial economic harm. Nothing in the record indicates that circumstances have changed, and both construction has progressed and further expenditures have been made since that time. Accordingly, if the right to continue construction of the Building were denied herein, the owner would suffer serious loss in the form of substantial economic harm.

## B.

However, even though the Board has recognized a common-law vested right, 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. Specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15 (N.Y. App. Div. 1976), holds that the following factors are relevant in determining whether a common-law vested right has lapsed: (1) abandonment, including the intent to abandon and an overt act, or some failure to act, implying that the owner neither claims nor retains any interest in the subject matter of the abandonment; (2) recoupment by the owner of all or part of his financial expenditures on the property without completing construction; or (3) the extent to which considerations of public safety, health and welfare indicate that enforcement of present zoning regulations would provide an overriding benefit to the public.

The applicant submits that it still maintains a vested right under *Putnam*. First, nothing in the record evinces an intent to abandon the vested right accruing to the Premises. The applicant notes that construction has only ever been stalled pursuant to court order and to comply with state law and that a temporary cessation of construction does not rise to the level of abandonment. Further, nothing indicates that recoupment has occurred or that the City has an overriding interest with respect to public safety, health, or welfare indicating that enforcement of the current zoning should occur.

## III.

Based on the foregoing, the Board finds that the evidence in the record supports the maintenance of a right to continue construction of the Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with 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 renew building permits associated with vested rights applications previously granted by the Board, issued by the Department of Buildings, acting on New Building Application No. 104870392, as well as all related permits for various work types, either already issued or necessary to complete construction, for four years and six months, expiring May 30, 2025, in light of the current state of emergency declared to exist within the City of New York resulting from an

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outbreak of novel coronavirus disease.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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**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**

THE VOTE TO CLOSE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

ACTION OF THE BOARD – Laid over to January 11-12, 2021, at 10 A.M., for decision, hearing closed.

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**ZONING CALENDAR**

**2017-272-BZ**

**CEQR #18-BSA-0037Q**

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 46<sup>th</sup> Road, Block 48, Lot 8, Borough of Queens.

**COMMUNITY BOARD #2Q**

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 18, 2018, acting on DOB Alteration Type I Application No. 421537723, reads in pertinent part:

“ZR 73-36, ZR 42-10 – Physical culture establishments are not as of right occupancy in an M1 District and may be granted under special permit by the BSA. Provide the required special permit.”

This is an application under Z.R. §§ 73-36 and 73-03

to legalize, on a site located within an M1-4 zoning district, the operation of a physical culture establishment (“PCE”) on the first floor of an existing one-story commercial building, contrary to Z.R. § 42-10.

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 26, 2019, and October 20, 2020, and then to decision on November 30, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the site and surrounding area. Community Board 2, Queens, recommends approval of this application. The Board also received four form letters in support of this application.

The Premises are located on the north side of 46<sup>th</sup> Road, between Vernon Boulevard and 11th Street, within an M1-4 zoning district, in Queens. With approximately 51 feet of frontage along 46<sup>th</sup> Road, 100 feet of depth, and 5,063 square feet of lot area, the Premises are occupied by an existing one-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 4,620 square feet of floor area on the first floor with areas for exercise, stretching, instruction, gymnastics, and restrooms. The PCE began operation in December 2013, as “CrossFit Gantry,” with the following hours of operation: Monday to Friday, 6:00 a.m. to 7:30 p.m., Saturday, 8:00 a.m. to 12:00 p.m., and closed Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located within an existing commercial building in a manufacturing district. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the

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principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE is located in a commercial building, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces and does not exceed 45 dBA. These measures include cushioned mats for weight areas and independently mounted speakers. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and the PCE will produce no negative impact to the surrounding area.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated November 13, 2020, the Fire Department states that the applicant has installed two 1-1/2 hour fireproof self-closing (“FPSC”) doors at the existing opening to the adjacent building. This arrangement will prevent the spread of fire between the two buildings and is also protected by a sprinkler system. By correspondence dated November 30, 2020, the Fire Department added that, in response to the Board's comments of October 19, 2020, the applicant had originally submitted plans to show two 1-1/2-hour FPSC doors at the existing opening to the adjacent building. In light of further communication between the Fire Department and the applicant, both parties are in agreement and a revised plan will be submitted to show only one 1-1/2-hour FPSC, between the two buildings. The Fire Department has no objection to having only one door, as the Fire Department does consider the Premises to be one building. This arrangement will prevent the spread of fire between the two buildings and is also protected by a sprinkler system. Therefore, the Fire Department has no objection to the above referenced application.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-0037Q, dated November 30, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-4 zoning district, the operation of a physical culture establishment on the first floor of an existing one-story commercial building, contrary

to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 30, 2020”—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 30, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-272-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 June 3, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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## **2018-66-BZ**

### **CEQR #18-BSA-134M**

APPLICANT – Sheldon Lobel, P.C., for 118 West 72<sup>nd</sup> 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 72<sup>nd</sup> Street, Block 1143, Lot 39, Borough of Manhattan.

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## COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 14, 2020, acting on DOB Application No. 123572179, reads in pertinent part:

“Proposed “Physical Culture Establishment” in a C4-6A zoning district is not “as of right” and requires a special permit from The New York City Board of Standards and Appeals (BSA) per ZR 32-31 and ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to 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 and cellar level of an existing 13-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10.

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 19, 2020, and then to decision on November 30, 2020. Community Board 7, Manhattan, recommends approval of this application. The Board received one letter in objection to the application and citing concerns over unwanted noise impacts from the PCE use.

The Premises are located on the south side of West 72nd Street between Amsterdam Avenue and Columbus Avenue, within a C4-6A zoning district, in Manhattan. With approximately 25 feet frontage along West 72<sup>nd</sup> Street, 102 feet of depth, and 2,554 square feet of lot area, the Premises are occupied by an existing 13-story plus cellar mixed-use residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 655 square feet of floor space on a portion of the cellar level with a stretching gym, restrooms, and showers; and 1,328 square feet of floor area on a portion of the first floor with

fitness areas, exercise equipment, restrooms and shower. The PCE began operation in June 2012, as “Dakota Personal Training and Pilates,” with the following hours of operation: 6:00 a.m. to 10:00 p.m., Monday through Friday; 7:00 a.m. to 8:00 p.m., Saturday; and 8:00 a.m. to 8:00 p.m., Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located on a heavily travelled commercial street with many mixed use buildings, many of which have ground floor commercial use and residential use above, local restaurants, bars and retail stores that are all compatible with PCE use. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include padding and soundproofing materials installed on the main floor; the maximum number of patrons during peak periods are only seven; both sound silencer panels and acoustical echo eliminator panels are installed on several of the flat surfaces of the first floor ceiling and walls to avoid transmission to the upper floors; the panels are acoustically rated and measure either 2' x 4' or 2' x 2' x 1"-thick and are impact resistant and Class-A fire retardant; and, the weight lifting platform is treated with thick with rubber matting.

The applicant states that, while spaces within the Premises are protected by a sprinkler and fire alarm system, neither are required within the PCE space. By correspondence dated October 16, 2019, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) that has been tested and satisfactorily to Fire Department rules and regulations. The Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

By Certificate of No Effect (CNE-19-28724), dated August 9, 2018, the Landmarks Preservation Commission permitted the documentation of existing interior conditions at the cellar level and first floor pursuant to a Department of Buildings application for a certificate of occupancy.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation

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of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18-BSA-134M, dated November 30, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C4-6A zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar level of an existing 13-story plus cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 25, 2020”—Eleven (11) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 30, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2018-66-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 June 3, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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## **2019-74-BZ CEQR #19-BSA-117Q**

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**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 8, 2019, acting on New Building Application No. 421003103, reads in pertinent part: “The proposed New Building is located around Major Airport area, and exceed the ‘airport referenced imaginary surfaces’, it is required a Special Permit From BSA as per sections 61-20 and 73-66 ZR.”

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit—in an R6 (C2-4) zoning district—the development of a building that would not comply with height restrictions applicable near major airports (Z.R. § 61-20).

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, with continued hearings on June 16, 2020, and November 10, 2020, and then to decision on November 30, 2020.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

Community Board 3, Queens, submitted testimony expressing concerns about the lack of information furnished by the applicant about this application. In response, the Board required, among other things, that the applicant to detail its proposal in further depth, to revise the proposed drawings to illustrate the building proposed, to elaborate on compliance with applicable zoning regulations, and to provide all of this additional information about the applicant’s proposal to the community board in accordance with the Board’s rules.

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The Queens Borough President also submitted testimony expressing concerns about the inadequacy of the original application and about safety and the height of the proposed development in comparison to the built environment of the surrounding area.

Local residents and civic associations also provided testimony in support of and opposition to this application. Those in support generally focused on the potential for positive economic benefits to the surrounding area from construction of a new mixed-use building. Those in opposition expressed concerns with the building height in comparison to the surrounding area and potential implications for safety, traffic, and parking.

## I.

The Premises are a block bounded by Northern Boulevard to the south, 112th Place to the west, and Astoria Boulevard to the northeast, in an R6 (C2-4) zoning district, in Queens. With approximately 316 feet of frontage along Northern Boulevard, 369 feet of frontage along 112th Place, 484 feet of frontage along Astoria Boulevard, 79,985 square feet of lot area, they are currently vacant and under construction.

## II.

The applicant now proposes to develop a mixed-use building with a total of 350,178 square feet of floor area (175,056 square feet residential, 29,242 square feet community facility, and 145,880 square feet commercial) that would rise to a building height of 367.81 NAVD88, a parapet-wall height of 373.81 NAVD88, and required air-traffic-obstruction lighting with a height of 375.31 feet NAVD88 (the “Proposed Building”).

The Proposed Building could not be constructed as of right because the Premises are located beneath the horizontal surface the Airport Circling District of LaGuardia Airport’s flight obstruction area at an elevation of 169.81 feet NAVD88 and because the Proposed Building would penetrate this horizontal surface. *See* Z.R. § 61-20.

## III.

The Zoning Resolution vests the Board with discretion to “permit the construction, *enlargement*, or reconstruction of a *building or other structure* in excess of the height limits established under Sections 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection Within any Flight Obstruction Area).” Z.R. § 73-66 (emphasis in original to indicate defined terms).

### A.

As a preliminary matter, the applicant must provide “a site plan, with elevations, showing the proposed *building or other structure* in relation to such maximum height limits.” *Id.* The record reflects, and the Board acknowledges, that the applicant has done so in this application.

### B.

The Board also notes that this application has been “refer[red] . . . to the Federal Aviation Administration for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways.” *Id.*

Having reviewed application materials for

construction of the Proposed Building, the Federal Aviation Administration issued three Determinations of No Hazard to Air Navigation on November 17, 2016, under Aeronautical Study No. 2016-AEA-6284-OE at latitude 40-45-30.19N, longitude 73-51-23.96W, 45 feet site elevation, 331 feet above ground level, and 376 feet above mean sea level (“Building Point 1”), under Aeronautical Study No. 2016-AEA-6285-OE at latitude 33.02N, longitude 73-51-24.72W, 27 feet site elevation, 349 feet above ground level, and 376 feet above mean sea level (“Building Point 2”), and under Aeronautical Study No. 2016-AEA-6286-OE at latitude 40-45-30.60N, longitude 73-51-21.69W, 39 feet site elevation, 337 feet above ground level, and 376 feet above mean sea level (“Building Point 3”) (collectively, the “FAA No Hazard Determinations”). The reviewed materials include a survey and three study points at the corners of the Premises keyed to maximum heights in NAVD88, and the applications were also circulated to the Port Authority of New York and New Jersey.

Responding to Board questions, the applicant further clarifies that, although the FAA No Hazard Determinations would have expired on 2018, construction has commenced, so the FAA No Hazard Determinations are still in effect.

The FAA No Hazard Determinations conclude that the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities” based on an “aeronautical study [that] considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures.”

However, the FAA No Hazard Determination also specifies the following conditions:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or: . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2)[.]

As a result of this structure being critical to flight safety, it is required that the FAA be kept apprised as to the status of the project. Failure to respond to periodic FAA inquiries could invalidate this determination.

Any height exceeding [the heights of Building Point 1, Building Point 2, and Building Point 3], will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 05/17/2018 unless: (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office. (b) extended, revised, or terminated by



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the issuing office. (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number. . . .

Additional Conditions: Any construction that requires the use of a crane for this structure should be e-filed with the FAA at least 90–120 days prior to crane operations exceeding the structure height. When a crane is e-filed with the FAA, it is recommended that a lift plan, jump schedule, crane specifications documents, and marking and lighting plan be attached with the e-filed proposal to ensure the FAA evaluation is completed as expeditiously as possible. Additionally, based upon IFR impacts, either a 1A or 2C survey may be requested prior to crane determinations being issued based upon those impacts.

Accordingly, the record reflects, and the Board acknowledges, that the Federal Aviation Administration has issued a satisfactory report that the Proposed Building “will [not] constitute a danger to the safety of air passengers or disrupt established airways.” Z.R. § 73-66.

## C.

The applicant submits that the Proposed Building “would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed *building*, to other *buildings* in

the vicinity or to the safety of air passengers, and would not disrupt established airways.” Z.R. 73-66.

In support of this contention, the applicant notes the FAA No Hazard Determinations’ conclusion that the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities.” The applicant submits that this conclusion reflects a thorough technical review by an expert federal agency with exclusive jurisdiction over commercial airports and the flight space that surrounds them—which makes the Federal Aviation Administration uniquely qualified to make determinations about potential hazards to airports, air space, air passengers and nearby structures.”

Additionally, the Port Authority of New York and New Jersey states, by letter dated May 4, 2017, that it agrees with the FAA No Hazard Determinations but also “request[s] that all conditions stated in the determination be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. . . . [S]eparate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceeds the overall heights as described in the determinations prior to any construction. Studies for this equipment should be filed at least 90–120 days prior to the start of operations.”

At hearing, the Board requested a site survey showing elevations at the Premises and that the proposed drawings be reviewed by a licensed surveyor to ensure their accuracy as to heights. In response, the applicant submitted the requested site survey and testimony from such a surveyor, confirming: “The elevations shown on the drawings are accurate as to Mean Sea Level (MSL) and North American Vertical Datum of 1988 (NAVD88).”

Accordingly, the Board believes it appropriate to defer to the Federal Aviation Administration’s determinations as to any potential hazards posed by proposed construction, and the Board finds that the Proposed Building would not constitute a hazard to its occupants, to other buildings in the vicinity, or to the safety of air passengers and would not disrupt established airways.

## D.

In addition to the foregoing, this application is subject to and guided by Section 73-01 through 73-04 of the Zoning Resolution, including the general findings of Section 73-03.

The applicant submits that the advantages to the community from construction of the Proposed Building outweigh any disadvantages. The applicant states that there would be no hazards associated with the increased height to be authorized by this application, as reflected in the FAA No Hazard Determinations.

The applicant also studied the surrounding area. Notably, the Premises are located at the northeast corner of the neighborhood, at the end of an established commercial corridor, at the foot of the junction of Northern Boulevard, Grand Central Parkway, and the Whitestone Expressway. To the east, there are highways, which would not be adversely affected. South of the Premises are tower-in-a-park-style high-rise apartment buildings, separated from the

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Premises by Northern Boulevard—a six-lane highway. To the west, there are a seven-story hotel, a manufacturing building, two-story detached residences, and a six-story hotel under construction—all of which would be similarly affected by an as-of-right building constructed to the airport height limit of 128 feet above ground level.

Additionally, the applicant notes that the Proposed Building has been designed using alternate setback regulations, increasing light and air at street level, while an as-of-right building could be constructed directly along the street line. In response to community concerns and questions from the Board at hearing, the applicant supplied a design study, reflecting that the Proposed Building would be constructed with rounded edges, wide sidewalks, and façade articulation to alleviate its apparent massing. The Proposed Building also includes an interior vehicular court to provide additional parking than required and minimize the effect of arriving and departing vehicles on the street system.

The applicant posits that the Proposed Building would also provide advantages to the community by including a hotel, which would increase the vibrancy of the local area, especially the commercial corridor along Northern Boulevard, with an increase in visitors for local establishments.

In response to the Board's request and community concerns about the height of the building with respect to neighborhood character, the applicant furnished a thorough legislative history of this special permit and the Board's general findings, demonstrating that the legislative history accords with the Board's practice of considering special permits under Sections 73-66 and 73-03 of the Zoning Resolution in a limited fashion that focuses on the increment between the allowable heights in the vicinity of airports and the potential safety ramifications of allowing a building to rise to a height otherwise allowed as of right under the Zoning Resolution's general height restrictions. As discussed above, nothing in the record indicates that such safety concerns would be present for the Proposed Building. To the contrary, both the Federal Aviation Administration and the Port Authority of New York and New Jersey indicate that the height of the Proposed Building would not implicate such safety concerns.

The Board notes that, consistent with this legislative history, its review herein is limited to the request for an increase in height above that allowed as of right. Additionally, all conditions contained in the FAA No Hazard Determinations have been adopted and incorporated into the Board's grant herein, so any act violating the FAA No Hazard Determinations further constitutes a violation of this decision and the Zoning Resolution.

Accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantages to the community at large due to this special permit is outweighed by the advantages to be derived by the community, and the proposed project will not interfere with any pending public improvement project.

#### IV.

With respect to environmental review, the project is classified as a Type II action under 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 19BSA117Q, dated November 30, 2020.

#### V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-66 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-66 and 73-03 to permit—in an R6 (C2-4) zoning district—the development of a building that would not comply with height restrictions applicable near major airports (Z.R. § 61-20); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received August 26, 2020”—nine (9) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum building height of 367.81 NAVD88, a maximum parapet-wall height of 373.81 NAVD88, and required air-traffic-obstruction lighting with a maximum height of 375.31 feet NAVD88, as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-74-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 4, 2025;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. 2016-AEA-6284-OE, 2016-AEA-6286-OE, and 2016-AEA-6286-OE, issued November 17, 2016, shall be followed, including:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or: . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2)[.]

As a result of this structure being critical to flight safety, it is required that the FAA be kept apprised as to the status of the project. Failure to respond to periodic FAA inquiries could invalidate this determination.

Any height exceeding [the heights of Building Point 1, Building Point 2, and Building Point 3], will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 05/17/2018 unless: (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office. (b) extended, revised, or terminated by

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the issuing office. (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number. . . .

Additional Conditions: Any construction that requires the use of a crane for this structure should be e-filed with the FAA at least 90–120 days prior to crane operations exceeding the structure height. When a crane is e-filed with the FAA, it is recommended that a lift plan, jump schedule, crane specifications documents, and marking and lighting plan be attached with the e-filed proposal to ensure the FAA evaluation is completed as expeditiously as possible. Additionally, based upon IFR impacts, either a 1A or 2C survey may be requested prior to crane determinations being issued based upon those impacts.

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 30, 2020.

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**2019-201-BZ**  
**CEQR #20-BSA-013M**

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corp., owner; Les Fitness LLC DBA Willy B CrossFit, lessee.

SUBJECT – Application August 2, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*Willy B CrossFit*) located in the cellar of an existing two-story building contrary to ZR §31-10. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, Block 306, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 3, 2019, acting on DOB Alteration Type I Application No. 121908347, reads in pertinent part:

“ZR 32-15, ZR 73-36: Proposed Physical Culture Establishment is not permitted as of right in a [C6-1G] zoning district and the term of the special permit issued by the Board of Standards and Appeals under calendar number 146-14-BZ expired on March 1, 2017.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-1G 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 and mezzanine commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on August 25, 2020, after due notice by publication in *The City Record*, with a continued hearing October 20, 2020, and then to decision on November 30, 2020. Vice-Chair Chanda performed an inspection of the site and surrounding area. Community Board 3, Manhattan, recommends approval of this application.

The Premises are located on the south side of Grand Street, between Forsyth Street and Eldridge Street, within a C6-1G zoning district, in Manhattan. With approximately 50 feet of frontage along Grand Street, 100 feet of depth, and 4,980 square feet of lot area, the Premises are occupied by an existing two-story plus cellar and mezzanine commercial building.

The Board has exercised jurisdiction over the Premises since May 19, 2015, when, under BSA Cal. No. 146-14-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-36 and 73-03, to legalize the operation of a PCE in the cellar

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(2,967 square feet of floor space) of the subject building, on condition that all work substantially conform to drawings filed with the application; the term of the PCE grant expire on March 1, 2017; any massages at the PCE be performed by New York State licensed massage therapists; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; weight lifting be performed on weight platforms with the specifications as shown on the Board-approved plans; 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 May 19, 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 of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Because this application was filed more than two years after the expiration of the term of the special permit under BSA Cal. No. 146-14-BZ, Section 1-07.3(b)(3)(iv) of the Board's Rules of Practice and Procedures requires the filing of a new special permit application.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 2,967 square feet of floor space on a portion of the cellar level with areas for exercise machines and equipment, workout space, weightlifting, and showers; and 920 square feet of floor area on a portion of the first floor with the PCE entrance. The PCE began operation in April 2019, as "WillyB CrossFit," with the following hours of operation: 5:00 a.m. to 9:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m., Saturday and Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located within an existing commercial building on a heavily traveled commercial thoroughfare that is characterized by

buildings with ground floor retail uses and commercial or manufacturing uses on the upper levels. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE is located in a commercial building, attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures, prepared in conjunction with a noise study conducted for the PCE operating pursuant to BSA Cal. No. 146-14-BZ, include weight platforms with sound attenuating panels, and a digital sound limiter to maintain appropriate noise levels. Further, the applicant submitted the recommendations of a sound engineer, stating that: a digital, tamper-resistant limiter should be placed in-line with the audio playback system to ensure that music is below NYC Noise Code in the 1st level restaurant located at the Premises; and, if the vibration is considered bothersome by the adjacent neighbors, the vibration from weight drops could be attenuated by using portable weightlifting platforms when weights greater than 135 pounds have the possibility of being dropped. The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood and states that the adjoining buildings are occupied by mixed-use buildings with ground floor commercial uses with residential above and, because proposed PCE space is in the cellar, it does not directly adjoin any residential uses.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated August 17, 2020, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler) that was tested to the satisfaction of the Fire Department on October 10, 2018. The original fire alarm system was also tested and witnessed by FDNY. According to the plans filed of the original fire alarm system and plans of the existing layout of the PCE, the fire alarm system has been altered without approval from FDNY. Based upon the foregoing the Fire Department objects to the application. An application must be filed with the Fire Department for the altered fire alarm system. The Department requests that the Board direct the applicant to file plans with the Bureau of Fire Prevention of the altered fire alarm system. By correspondence dated October 8, 2020, the Fire Department states that the Bureau of Fire Prevention received plans of proposed fire alarm system to be installed at the Premises in response to the "Letter of Objection" and has found it to be acceptable. The plans will

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be reviewed by the Bureau of Fire Prevention Fire Alarm Unit upon receipt of an approved Schedule "A" from the applicant. The Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-013M, dated November 30, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The Board notes that the term of the special permit has been reduced to reflect the period that the PCE has operated without approval.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-1G zoning district, the operation of a physical culture establishment on portions of the cellar level and first floor of an existing two-story plus cellar and mezzanine commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received November 12, 2020"—Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring April 1, 2029;

THAT rogue boxes shall be used during weightlifting activities with the specifications as shown on the Board-approved plans;

THAT sound limiters shall be used at all times consistent with the recommendations of the acoustical consultant and as shown on the Board-approved plans;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including

but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-201-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 June 3, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.

## 2020-13-BZ

### CEQR #20-BSA-063K

APPLICANT – Law Office of Jay Goldstein, for 71 Smith Street Property Owner, LLC; Giles Endurance, LLC d/b/a F45, lessee.

SUBJECT – Application January 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-1 zoning district.

PREMISES AFFECTED – 71 Smith Street (140 Schermerhorn Street, 263-265 State Street), Block 170, Lot 7501, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated January 14, 2020, acting on DOB Application No. 321987383, reads in pertinent part:

"Proposed physical culture establishment in C6-1 zoning district is not permitted pursuant to ZR 32-10 and is referred to the Board of Standards and Appeals for special permit under ZR 73-36."

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C6-1 zoning district and in the Special Downtown Brooklyn District, the

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operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 19-story plus cellar mixed-use commercial hotel and residential building, contrary to Z.R. § 32-10.

A public hearing was held on this application on October 20, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Commissioner Ottley-Brown performed an inspection of the site and surrounding area. Community Board 2, Brooklyn, waived its recommendation of this application.

The Premises are bounded by Smith Street to the west, Schemerhorn Street to the north, and State Street to the south, within a C6-1 zoning district and in the Special Downtown Brooklyn District, in Brooklyn. With approximately 180 feet of frontage along Smith Street, 206 feet of frontage along Schemerhorn Street, 100 feet of frontage along State Street, and 27,582 square feet of lot area, the Premises are occupied by an existing 19-story plus cellar mixed-use commercial hotel and residential building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 3,550 square feet of floor area on a portion of the first floor with an exercise studio, exercise equipment areas, an office, and restrooms with showers. The PCE began operation in May 2019, as “F45,” with the following hours of operation: 5:00 a.m. to 9:00 p.m., Monday through Friday; 7:00 a.m. to 6:30 p.m., Saturday; and 7:00 a.m. to 8:30 p.m., Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located entirely within the first floor of the existing commercial portion of the Premises and PCE use is consistent with the character of the uses in the surrounding area which is primarily characterized by commercial, community facility, and residential uses. Further, the applicant represents that the PCE does not attract significant additional traffic to the area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and

aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include certain partitions isolated from the floor and ceiling using continuous isolation pad, acoustical sealant, and two-5/8" G.W.B. layers with sound attenuation insulation; each penetration at the studio ceiling and walls is sealed with mineral fiber insulation and acoustical sealant; all flooring at the studio is either 1/2"-thick non-slip rubber tile mat or 1"-thick astroturf; existing demising walls have an STC rating of 56, and the existing cellar ceiling has an STC rating of 60. The PCE space is located directly below the building’s parking garage and is adjacent to another PCE. The PCE is outfitted with 4 speakers that are controlled by PCE instructors, and are password protected with limiters that can be adjusted by a qualified individual to ensure that there is no audible sound in the adjacent acoustically sensitive spaces.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated October 16, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) that has been tested and signed-off by the Department of Buildings. A fire alarm system has also been installed and signed-off by the Fire Department. The Fire Department has no objection to the application.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-063K, dated November 30, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The Board notes that the term of the special permit has been reduced to reflect the period that the PCE has operated without approval.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C6-1 zoning district and in the

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Special Downtown Brooklyn District, the operation of a physical culture establishment on a portion of the first floor of an existing 19-story plus cellar mixed-use commercial hotel and residential building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 5, 2020”—Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring May 1, 2029;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-13-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 June 3, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.

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## 2020-20-BZ

### CEQR #20-BSA-069M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Young Golf LLC (d/b/a SSWING) owner.

SUBJECT – Application March 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (SSWING) to be located on a portion of the first floor of an existing 45-story commercial building contrary to ZR §32-10. C5-3 (MID) zoning district.

PREMISES AFFECTED – 245 Park Avenue, Block 1301, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 19, 2020, acting on DOB Alteration Type I Application No. 123848006, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ in C5-3 zoning district 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.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C5-3 zoning district and in the Special Midtown District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 45-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on October 20, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Vice-Chair Chanda performed an inspection of the site and surrounding area. The Board received one form letter in support of this application.

The Premises are bounded by Park Avenue to the west, East 46th Street to the north, Lexington Avenue to the east, and East 45th Street to the south, within a C5-3 zoning district and in the Special Midtown District, in Manhattan. With approximately 201 feet of frontage along each Park Avenue and Lexington Avenue, 405 feet of frontage along each East 46th Street and East 45th Street, and 81,336 square feet of lot area, the Premises are occupied by an existing 45-story commercial residential building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning

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Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 4,000 square feet of floor area on a portion of the first floor with areas for reception, golf simulators, putting, exercise, restrooms, office, and storage. The PCE is proposed to operate as “SSWING,” daily, from 6:00 a.m. to 11:00 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE use is a desirable use in the surrounding area, and states that most patrons walk to the PCE. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, weight reduction, and aerobics. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE will be located within a commercial building, no noise issues are anticipated as there is no music or large weights associated with the subject PCE use, and ensures that the sound level in the other portions of the building does not exceed the maximum interior noise level of 45dBA.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated October 20, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) that has been tested and have current FDNY permits. A fire alarm system is also installed, which has been tested and passed satisfactorily. The Fire Department has no objection to the application.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-069M, dated November 30, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination

under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C5-3 zoning district and in the Special Midtown District, the operation of a physical culture establishment on a portion of the first floor of an existing 45-story commercial residential building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 7, 2020”—Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 30, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-20-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 June 3, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.



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# MINUTES

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**2020-31-BZ**

**CEQR #20-BSA-079M**

APPLICANT – Akerman LLP, for John Hancock Life Insurance Co., owner.

SUBJECT – Application April 7, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Orangetheory Fitness*) to be located on a portion of the first floor of an existing building contrary to ZR §32-10. C6-5 Special Lower Manhattan Purpose District.

PREMISES AFFECTED – 100 William Street, Block 68, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD # 1M**

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 9, 2020, acting on DOB Alteration Type I Application No. 123572400, reads in pertinent part:

“Proposed “Physical Culture Establishment” in C5-5 zoning district is not “as of right” and requires a special permit from the Board of Standards and Appeals (BSA) per ZR 32-21 and ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to 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 (“PCE”) on a portion of the first floor of an existing 21-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on October 20, 2020, after due notice by publication in *The City Record*, and then to decision on November 30, 2020. Community Board 1, Manhattan, recommends approval of this application.

The Premises are bounded by William Street to the west, John Street to the north, and Platt Street to the south, within a C5-5 zoning district and in the Special Lower Manhattan District, in Manhattan. With approximately 122 feet of frontage William Street, 145 feet of frontage along John Street, 164 feet of frontage along Platt Street, and 18.513 square feet of lot area, the Premises are occupied by an existing 21-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or

revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 3,661 square feet of floor area on a portion of the first floor with an exercise studio, restrooms, showers, retail space, and reception. The PCE is proposed to operate as “Orangetheory Fitness,” from 5:00 a.m. to 9:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m., Saturdays and Sundays.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use is consistent with mixed-use character of the surrounding area, which has compatible local commercial uses including retail stores, eating and drinking establishments, and other gyms, in addition to residential use; the proposed PCE is compatible with other local commercial and residential uses because it will cater to many of the same customers and residents within the surrounding area; and PCE use is consistent with the Special Lower Manhattan District. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that, while the PCE will be located within a commercial building, sound attenuation measures will be maintained to ensure there are no negative sound or vibration impacts to nearby occupied spaces. These measures include an acoustic suspended ceiling and 2-3/4-inch-thick rubber flooring in the studio; the acoustic suspended ceiling and rubber flooring reduce noise and vibration transfer from activity within the gym. The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated October 20, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) and a fire alarm system that has been tested and have current FDNY permits. The Fire Department has no objection to the application.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-079M, dated November 30, 2020.

Therefore, the Board has determined that the evidence

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in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a 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 21-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 8, 2020”—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 30, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-31-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 June 3, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 30, 2020.

## 2018-142-BZ

APPLICANT – Dennis P. George, owner.  
SUBJECT – Application August 29, 2018 – Variance (§72-21) to permit the development of a two-story plus attic & cellar Use Group (“UG”) 2 residential building contrary to ZR §§22-00 (Zero Lot line building) & § 32-461a (Side Yard less than minimum required). R3-1 zoning district.  
PREMISES AFFECTED – 204-23 46<sup>th</sup> Road, Block 7304, Lot 53, Borough of Queens.

### COMMUNITY BOARD #19Q

THE VOTE TO CLOSE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for decision, hearing closed.

## 2019-265-BZ

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for decision, hearing closed.

## 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Amendment of a previously approved application that permitted a building located within the bed of a mapped street contrary to General City Law 35. C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for decision, hearing closed.

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## 2019-292-BZ

APPLICANT – The Law Office of Vincent L. Petraro, PLLC., for Epic Tower LLC, owner.

SUBJECT – Application November 8, 2019 – 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.

PREMISES AFFECTED – 41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of Queens.

### COMMUNITY BOARD # 7Q

THE VOTE TO CLOSE –

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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## 2019-296-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2374 Concourse Associates, LLC & 101 E. Burnside Partners LLC, owners; Acqua Ancien Bath New York LLC, lessee.

SUBJECT – Application November 26, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Aire Ancient Baths) contrary to ZR §32-10. C6-2A zoning district. Tribeca East Historic District.

PREMISES AFFECTED – 84 Franklin Street, Block 175, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for deferred decision.

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## REGULAR MEETING

### MONDAY-TUESDAY AFTERNOON

NOVEMBER 30-DECEMBER 1, 2020, 2:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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## ZONING CALENDAR

### 2019-162- BZ

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6<sup>th</sup> Ave LLC, owner.

SUBJECT – Application May 30, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (floor area ratio and open space ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 22-23, 2021, at 10 A.M., for continued hearing.

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### 2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166<sup>th</sup> Street, Block 7026, Lot 21, Borough of Queens.

### COMMUNITY BOARD # 8Q

**ACTION OF THE BOARD** – Laid over to March 8-9, 2021, at 10 A.M., for postponed hearing.

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### 2019-279-BZ

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application October 22, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3A Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 4119 Richmond Avenue, Block 5268, Lot 37, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to March 22-23, 2021, at 10 A.M., for continued hearing.

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# MINUTES

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**2020-14-BZ**

APPLICANT – Akerman LLP, for 34-10 12<sup>th</sup> Realty LLC, owner.

SUBJECT – Application January 30, 2020 – Variance (§72-21) to permit the enlargement of a one-story, non-conforming manufacturing establishment (UG 17) contrary to ZR §§22-10 and 52-41. R5 zoning district.

PREMISES AFFECTED – 34-10 12<sup>th</sup> Street, Block 326, Lot 29, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to March 22-23, 2021, at 10 A.M., for continued hearing.

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**2020-19-BZ**

APPLICANT – Amato Law Group, PLLC, for Tangram House South Sponsor LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee.

SUBJECT – Application March 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) located within a portion of the first floor of an existing building contrary to ZR §32-10. C4-2 zoning districts.

PREMISES AFFECTED – 144-27 39<sup>th</sup> Avenue, Block 4972, Lot 7504, Borough of Queens.

**COMMUNITY BOARD #7Q**

THE VOTE TO CLOSE –

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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**2020-22-BZ**

APPLICANT – Amato Law Group, PLLC, for 3312 36<sup>th</sup> Avenue Realty LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee.

SUBJECT – Application March 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) within an existing building contrary to ZR §42-10. M1-1 zoning district

PREMISES AFFECTED – 33-12 36<sup>th</sup> Avenue, Block 602, Lot 34, Borough of Queens.

**COMMUNITY BOARD # 1Q**

THE VOTE TO CLOSE –

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 14-15, 2020, at 10 A.M., for decision, hearing closed.

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**2020-23-BZ**

APPLICANT – Goldman Harris LLC, for LIC Site B-1 Owner, LLC, owner.

SUBJECT – Application March 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Performance Lab) to be located on a portion of the first floor and cellar of an existing building contrary to ZR §42-10. M1-6/R10 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 28-07 Jackson Avenue, Block 420, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 11-12, 2021, at 10 A.M., for decision, hearing closed.

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**2020-38-BZ**

APPLICANT – Law Office of Jay Goldstein, for 22-12 Jackson Avenue Owners, LLC, owner; Blue Giant Fitness d/b/a F45, lessee.

SUBJECT – Application May 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located on a portion of the first floor of an existing building contrary to ZR §42-10. M1-5/R7X Special Long Island City Purpose District.

PREMISES AFFECTED – 22-18 Jackson Avenue, Block 72, Lot 65, Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 25-26, 2021, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 105, Nos. 49-51

December 25, 2020

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

*Commissioners*

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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2019-90-A	24, 32 Joralemon Street, Brooklyn
2019-176-A	17 Eastern Parkway, Brooklyn
2019-182-A	1 Marina Road, Queens
2019-190-A	40-17 28 <sup>th</sup> Avenue, aka 25-92 41 <sup>st</sup> Street, Queens
2019-161-BZ	55 Prospect Street, Brooklyn
2019-292-BZ	41-62 Browne Street, Queens
2020-19-BZ	144-27 39 <sup>th</sup> Avenue, Queens
2020-22-BZ	33-12 36 <sup>th</sup> Avenue, Queens
2020-35-BZ	136-18 Maple Avenue, Queens
2017-34-BZ	311 Adams Avenue, Staten Island
2019-24-BZ	2721 Nostrand Avenue, Brooklyn
2019-35-BZ	235 Beaumont Street, Brooklyn
2019-66-BZ	15 Terrace View Avenue, Manhattan
2019-203-BZ	144-43 Farmers Boulevard, Queens
2019-205-BZ	485 Van Sinderen Avenue, Brooklyn
2019-280-BZ	137 Fifth Avenue, Manhattan
2020-61-BZ	342-346 East 104 <sup>th</sup> Street, Manhattan

Afternoon Calendar .....527

**Affecting Calendar Numbers:**

2020-12-BZ	356 Wythe Avenue (354-360 Wythe Avenue, 45-51 South 3 <sup>rd</sup> Street, 60-62 South 2 <sup>nd</sup> Street, Brooklyn
2020-33-BZ	437 88 <sup>th</sup> Street, Brooklyn
2020-72-BZ	85 Jay Street, Brooklyn

Corrected Calendar .....528

**Affecting Calendar Numbers:**

2018-140-BZ	100-03 North Conduit Avenue, Queens
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# DOCKETS

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New Case Filed Up to December 14-15, 2020  
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**2020-89-BZ**

111 Langham Street, Block 8755, Lot(s) 0012, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home. R3-1 zoning district. R3-1 district.  
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**2020-90-A**

244 Ganesvoort Boulevard, Block 00761, Lot(s) 0045, Borough of **Staten Island, Community Board: 2**. Proposed construction of a two-family building located within the bed of a mapped street, contrary to General City Law Section 35 and waiver of street wall and sky exposure plane under 72-01-(g). R3X zoning district. Lower Density Growth Management Area. R3X district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING

**FEBRUARY 8-9, 2021, 10:00 A.M. and 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** of teleconference public hearings, Monday, February 8, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday February 9, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website ([www.nyc.gov/bsa](http://www.nyc.gov/bsa)), with remote public participation, on the following matters:

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## SPECIAL ORDER CALENDAR

### 599-76-BZII

APPLICANT – Eric Palatnik, PC, for Jeffrey Mink, owner.  
SUBJECT – Application March 3, 2020 – Amendment and Extension of Term of a previously approved Variance (72-21) which permitted the operation of a two-story (UG 17) accessory storage and shipping building (FM Brush Company) which expired on December 21, 2016. The amendment seeks to amend the Board's condition of term to re-instate the variance; Waiver of the Board's Rules of Practice and Procedures. R4-1 zoning district.  
PREMISES AFFECTED – 72-02 72nd Place, Block 03664, Lot 7, Borough of Queens.

**COMMUNITY BOARD #5Q**

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### 315-90-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for Hills Fuels, LLC, owner.  
SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (BP Amoco) with accessory convenience store which expires on January 25, 2021. C2-2/R4 zoning district.  
PREMISES AFFECTED – 82-06 Astoria Boulevard, Block 1094, Lot 0001, Borough of Queens.

**COMMUNITY BOARD #3Q**

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### 395-04-BZIV

APPLICANT – Vassalotti Associates Architects, LLP, for Congregation Imrei Yehudah, owner; Rabbi Meyer Unsderfer, lessee.  
SUBJECT – Application May 21, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on June 5, 2016; waiver of the Rules. R5 zoning district.  
PREMISES AFFECTED – 1232 54th Street, Block 5676, Lot(s) 0017, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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## APPEALS CALENDAR

### 2018-188-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.  
SUBJECT – Application November 21, 2018 – Proposed construction of two two-story, single-family detached residential buildings seeking waivers of General City Law § 35, which are partially within the bed of a mapped but unbuilt portion of Clover Place. R1-2 zoning district.  
PREMISES AFFECTED – 194-28 & 194-32 Dunton Avenue, Block 10509, Lot 160, Lot 61, Borough of Queens.

**COMMUNITY BOARD #8Q**

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### 2020-49-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for 38-30 28<sup>th</sup> Street LLC, owner.  
SUBJECT – Application June 8, 2020 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously granted common law vested right to construct an 8-story hotel, which expired on October 7, 2018.

PREMISES AFFECTED – 38-30 28th Street, Block 00386, Lot 0027, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## ZONING CALENDAR

### 2018-124-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for Beacway Operating LLC, owner; Flywheel Sports, lessee.  
SUBJECT – Application July 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Flywheel Sports) to be in a portion of the cellar of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District, NYC Designated Interior Landmark Building.

PREMISES AFFECTED – 2130 Broadway, Block 01166, Lot 35, 135, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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### 2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27<sup>th</sup> Street Property Investors IV, LLC, owner; Equinox West 27<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application January 3, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox) within an existing commercial building §42-10. M1-6 zoning district. Madison Square North Historic District.

PREMISES AFFECTED – 31 West 27<sup>th</sup> Street, Block 829, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #5M**



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# CALENDAR

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## 2020-30-BZ

APPLICANT – Eric Palatnik, P.C., for PFAS Realty Corp., owner; Fortified Holistic LLC, lessee.

SUBJECT – Application April 2, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (CrossFit Dutch Kills) to be located on a portion of the first-floor and mezzanine of an existing building contrary to ZR §42-10. M1-2 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 37-40 31<sup>st</sup> Street, Block 372, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## 2020-37-BZ

APPLICANT – Law Office of Jay Goldstein, for 7<sup>th</sup> and 23<sup>rd</sup> Associates, LP, owner; Mind Body Project, lessee.

SUBJECT – Application April 28, 2020 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (Mind Body Project) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-3X, R8A.C2-5 and C6-3A zoning districts.

PREMISES AFFECTED – 217 Seventh Avenue, Block 00798, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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## 2020-41-BZ

APPLICANT – Akerman LLP, for DE Boulevard LLC, owner; PFNY LLC, lessee.

SUBJECT – Application May 6, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Planet Fitness) to locate on a portion of the cellar and first floor of a new building contrary to ZR §32-10. C4-5X, C4-4A, Special Forest Hills District

PREMISES AFFECTED – 107-02 Queens Boulevard, Block 03238, Lot 44, Borough of Queens.

**COMMUNITY BOARD #6Q**

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## 2020-42-BZ

APPLICANT – Eric Palatnik, PC, for Dmitry and Marianna Gorelik, owner.

SUBJECT – Application May 13, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 155 Girard Street, Block 8750, Lot 0383, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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## 2020-45-BZ & 127-15-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application May 22, 2020 – Variance (ZR §72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR §33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-339(b)(3) and ZR §33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District (ZR §61-21); Amendment of a previously approved Special Permit (ZR §73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

**COMMUNITY BOARD #7Q**

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## 2020-48-BZ

APPLICANT – Akerman LLP, for Barry's Bootcamp (PCE Operator) owner.

SUBJECT – Application June 5, 2020 – Special Permit (§73-36) to permit the operation of a new Physical Culture Establishment (PCE), a Barry's Bootcamp fitness center, on the cellar level and ground floor of an existing 18-story, mixed residential and commercial building contrary to ZR §32-10. C2-8A zoning district.

PREMISES AFFECTED – 237-241 East 86th Street, Block 1532, Lot(s) 0016, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Margery Perlmutter, Chair/Commissioner*

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# MINUTES

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**REGULAR MEETING  
MONDAY-TUESDAY MORNING  
DECEMBER 14-15, 2020, 10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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**SPECIAL ORDER CALENDAR**

**58-30-BZ**

APPLICANT – Nasir J. Khanzada, P.E., for Manny Kumar, owner.

SUBJECT – Application October 12, 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 legalize alterations which removed two service bays and enlargement and conversion of a portion of the building to a convenience store; relocation of gasoline pumps and installation of a new canopy. R4 zoning district.

PREMISES AFFECTED – 73-13 Cooper Avenue, Queens  
**COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 6, 2018, acting on DOB Job No. 421476423, reads in pertinent part, “Proposed convenience store and changes to site layout are not as of right uses in a R4-1 district and contrary to previously approved BSA Cal#58-30-BZ resolutions and plans and must be referred [] to the Board of Standards and Appeals for approval.”

This is an application for an amendment of a variance, previously granted by the Board, which permitted the use of the site as an automotive service station with motor vehicle repair, and the parking and storage of more than five vehicles.

A public hearing was held on this application on June 1, 2020, after due notice by publication in *The City Record*, with continued hearings on August 24, 2020, October 5, 2020, and November 9, 2020, and then to decision on December 14, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 5, Queens, recommends approval of this application on condition that harsh lighting mounted on the building negatively affecting the surrounding community be disconnected, removed and not replaced. The Board also received a letter in support of this application from the Queens Borough President on condition that all lighting fixtures face down and away from

residential neighbors and any existing extreme lighting be removed.

The Premises are located on the northwest corner of Cooper Avenue and 73rd Place, within an R4-1 zoning district, in Queens. With approximately 123 feet of frontage along Cooper Avenue, 64 feet of frontage along 73rd Place, and 9,590 square feet of lot area, the Premises are occupied by an existing automotive service station with motor vehicle repairs and an accessory convenience store (1,551 square feet of floor area).

The Board has exercised jurisdiction over the Premises since April 15, 1930, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station on condition that there be constructed along the northerly and westerly property lines a fence of metal construction not less than 7'-0" in height; there be constructed along the building line on Cooper Avenue and 73rd Place a concrete curbing not less than 12 inches above grade; there not be more than two vehicular openings Cooper Avenue and not more than two vehicular openings on 73rd Place; no vehicular opening exceed in width ten feet in the clear; the curb cuts be located directly in front of vehicular entrances to plot and be not less than 12 feet in width; no gasoline pump be constructed or located within ten feet of the building line on either street front; the one-story office building indicated on the plans be finished on the exterior with light-colored face brick, roof finished with Spanish tile or variegated slate; any other buildings erected on the Premises for use incidental to the conduct and operation of the gasoline sales station be limited to one story in height, finished on the exterior with light-colored face brick; and, all permits required be obtained within six months and any work involved be completed within one year.

On November 24, 1942, under the subject calendar number, the Board amended the variance by adding that the arrangement of the Premises may be substantially as indicated on plans filed with the application and may include the additional lot to the west, formerly known as tax lot number 24, having a frontage on Cooper Avenue of 27/15 feet and a depth of 86.90 feet; additional occupancy of the Premises may be permitted, consisting of the parking or storage of motor vehicles, on condition that not over 20 motor vehicles be so stored or parked; such motor vehicles be of the pleasure-car type only and only such as are in condition for operation; the existing curb cuts as shown not be extended; the existing lot line wire fence to the west and to the north be continued, but be replaced with masonry walls not less than 6'-6" in height within two years from the amendment; such walls be of face brick on both sides, conforming in color and texture with the face brick of the accessory buildings and be properly coped; such walls may be reduced to a height of four feet within six feet of the building line of 73rd Place and Cooper Avenue; such wall may be omitted toward the west where the wall of the adjoining building occurs; no openings be made in the existing accessory buildings to adjoining Premises; the curbing along the street building line, as required, may be

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# MINUTES

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omitted; any use not in accordance with the requirements of the amendment be discontinued; all signs, roof, temporary or otherwise, be removed and no signs be installed on the Premises, other than permanent fixed signs attached to the accessory building, the illuminated globes of the pumps, and the erection of a 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 more than four feet; the entire Premises where not occupied by accessory buildings, pumps, and walls, be cement paved; the sidewalks and curbing be repaired and the space between the present sidewalk paving and curbing on 73rd Place and Cooper Avenue be seeded to grass and the existing trees and grass maintained in good condition; all permits required be obtained and all work completed within one year, and a new certificate of occupancy be obtained.

On June 17, 1947, under the subject calendar number, the Board further amended the resolution by adding that in the event the owner desires to erect an additional building, such may be constructed as indicated on plans filed with the amendment, and the repairing of cars may be permitted on condition that no cars be repaired except within such building and limited to one bay approximately 25 feet in depth by 15 feet in width; the balance of the building be occupied as proposed for lubritorium, car washing, and accessory showroom; the repair work be done by hand tools only; the existing steam jenny for flushing out motors or other uses be removed from the Premises; in all other respects, the resolution be complied with; the wall on the lot line required be constructed, except that the wall and fence may be omitted along the lot line where the proposed building is to be constructed; there be no openings in the proposed buildings to the adjoining lots; the parking use now be reduced to not over eight cars in view of the construction of the proposed building on former parking area; such building be not nearer than ten feet to the street building line and the wall be continued to the street building but reduced in height to a height of not over five feet and the ten-foot space between building line and building proposed be kept planted properly protected by concrete curbs not less than six inches in height; no trucks be stored on the Premises; such portable firefighting appliances be maintained as the Fire Commissioner directs; in all other respects the buildings and occupancy comply with all laws, rules, and regulations applicable thereto; and, all permits be obtained for the new building and uses within one year.

On October 28, 1947, under the subject calendar number, the Board accepted revised plans.

On June 29, 1948, under the subject calendar number, the Board extended the time to obtain permits and complete the work for one year.

On January 20, 1953, under the subject calendar number, the Board further amended the resolution and reaffirmed that no signs be installed on the Premises, other than permanent fixed signs attached to the accessory building, the illuminated globes of the pumps, and the erection of a 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 more than four feet.

The applicant seeks an amendment to legalize the conversion of a portion of the existing accessory building to an accessory convenience store in accordance with DOB Technical Policy and Procedure Notice (“TPPN”) # 10/99. TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. The applicant submits that the proposed sales area of the accessory convenience store is 1,151 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (2,397.5 square feet). The applicant does not propose to enlarge, extend or relocate the existing one-story accessory building, and, instead, proposes interior alterations and non-structural site modifications as are permitted pursuant to Z.R. § 11-412.

Over the course of hearings, the Board raised concerns regarding the proximity of the trash enclosure and air pump to nearby residences, site circulation and maneuverability, the presence of high light levels at the Premises affecting nearby properties, and whether the Premises were adequately landscaped.

In response, the applicant amended the plans to relocate the trash enclosure and air pump away from nearby residences, moved parking spaces to provide better maneuverability, and provided a landscaping plan proposing to take necessary measures to repel rodents and other pests from the Premises. Additionally, the applicant represents that light spread measurements were conducted at the Premises concluding that the lights above the fuel dispensers are reaching the residential lot line. Therefore, the applicant commits to replacing and angling said lighting away from the nearby residences to ensure that the Premises lighting casts zero light levels on adjacent residential properties.

By letter dated March 9, 2020, the Fire Department states that the Premises are current with their permits for the repair shop, storage of tires and tire byproducts, and storage/use and sale of combustible liquids less than 500 gallons. The fuel pumps are protected by a fire suppression system (dry-chemical) that has been inspected and tested to the Department’s satisfaction. The Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards

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and Appeals does hereby *amends* the resolution, dated April 15, 1930, as amended through January 20, 1953, so that as amended this portion of the resolution shall read: “to *permit* the use of the accessory building as an accessory convenience store *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received November 27, 2020—thirteen (13) sheets’; and *on further condition*:

THAT lighting shall be replaced and maintained at all times to ensure zero (0.00) light levels at the property line shared with residences;

THAT the asphalt, landscaping, buildings, wheel stops, trash enclosure shall be maintained in first-rate condition at all times;

THAT the Premises shall remain free of debris and graffiti at all times;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 58-30-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by June 16, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 14, 2020.

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## 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 – 76-36 164<sup>th</sup> Street, Block 6848, Lot 1, Borough of Queens.

## COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures; an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 11-411, which permitted the operation of an Automotive Service Establishment (Use Group (“U.G.”) 16B), and expired on September 23, 2017; and an extension of time to obtain a certificate of occupancy, which expired on March 15, 2010.

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with continued hearings on August 24, 2020, and October 19, 2020, and then to decision on December 14, 2020. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 8, Queens, recommends approval of this application.

The Premises are located on the southeast corner of 164th Street and 76th Road, within an R3-2 (C2-2) zoning district, in Queens. With approximately 160 feet of frontage along 164th Street, 110 feet of frontage along 76th Road, 16,785 square feet of lot area, the Premises are occupied by an existing one-story building which serve as a repair shop and storage areas for automotive parts.

The Board has exercised jurisdiction over the Premises since March 25, 1958, when, under BSA Cal. No. 600-57-BZ, the Board granted a variance to permit the premises to be occupied for parking and storage of motor vehicles substantially as proposed and as indicated on plans filed with the application for a term of five years to expire on March 25, 1963, on condition that all buildings and uses now on the premises be removed and the premises be leveled substantially to grade of Story Avenue and Havemeyer Avenue; there be erected on all lot lines a woven wire fence of the chain link type not less than 5'-6" in height; along Havemeyer Avenue, Story Avenue, and the lot lines adjacent to the residential occupancy there be erected within the fence a hemlock hedge in area not less than 5'-0"

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in width protected with concrete curbing not less than 0'-8" above grade and not less than 0'-6" in width; bumpers at proper distance be maintained to protect the hedge; the balance of the plot be surfaced with clean gravel or steam cinders and treated with a binder and properly rolled; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; during the term of the variance, the Premises be occupied for no other use and no building be erected thereon; there may be an entrance in the fence to Story Avenue fitted with gates not over 14'-0" in width which remains closed except when the parking lot is in operation and opposite there may there may be a curb cut of similar width; the sidewalks and curbing abutting the Premises be constructed or repaired to the satisfaction of the Borough President; signs be restricted to one sign attached to the fence at the entrance to Story Avenue not exceeding 4 sq. ft. in area provided such sign is not illuminated and does not extend beyond the building line advertising the private use of the Premises and such other information as may be required by the Commissioner of Licenses; and all permits be obtained and all work completed and certificate of occupancy obtained within the requirements of the Zoning Resolution.

On January 5, 1960, under BSA Cal. No. 600-57-BZ, the Board granted an application for reconsideration of a decision which it previously denied, to permit the erection and maintenance of a gasoline service station, lubritorium, car washing non-automatic, minor repairs with hand tools only, office, sales and storage of auto accessories and parking of cars waiting for service with curb cuts and ground sign in a residence use district for a stated term of 15 years.

On March 21, 1961, under BSA Cal. No. 600-57-BZ, the Board denied the application to permit, in a residence use district, the erection and maintenance of a gasoline service station, lubritorium, auto washing, office and sales of auto accessories, minor auto repair with hand tools only, ground sign and parking of cars awaiting service.

On December 12, 1961, the Board granted an application for reconsideration of a decision which it previously denied, to permit, in a residence use district, the erection and maintenance of a gasoline service station, lubritorium, auto washing, sales of auto accessories, minor auto repairs with hand tools only, ground sign and parking of cars awaiting service. On that same day, the Board granted a variance to permit, for a term of 25 years, to expire on December 12, 1986, in a residence use district, the erection and maintenance of a gasoline service station, lubritorium, minor repairs wit hand tools only, hand washing of cars, with store for the sale of tires and auto accessories and ground sign and parking and storage of cars awaiting service, on condition that work conform with drawings filed with the application; all laws, rules and regulations applicable be complied with; and a permit obtained, work done, and a certificate of occupancy obtained within the requirements of the Zoning Resolution. On that same date, the Board granted a variance to permit in a business and local retail use district, the change in use of a

part of the second floor from storage of plastic toys to manufacturing of shoulder pads and the storage of acetate, nylon, cotton, dacron, wool, rayon and orlon linings and battings, on condition that the work conform with drawings filed with the application; a sprinkler system be maintained throughout the building; the owner obtain a permit from the Fire Department for the storage of acetate; all laws, rules, and regulations applicable be complied with; and permits be obtained, work completed, and a certificate of occupancy obtained within the requirements of the Zoning Resolution.

On September 15, 1992, under BSA Cal. No. 318-90-BZ, the Board granted a special permit, under Z.R. § 11-411, to permit the re-establishment of an expired variance or an automotive service station with accessory uses (UG 16) on condition that all work substantially conform to drawings as they apply to the objected noted filed with the application; there be no parking of vehicles on the sidewalk; there be no automobile sales on the lot; all automobile repairs take place within the enclosed building; there be no overnight storage of trucks on the Premises; landscaping be planted and maintained in accordance with BSA-approved plans; the Premises remain graffiti-free; the dumpster be located in accordance with BSA-approved plans; a guard rail o the curb separating the landscaping from paved areas be maintained in accordance with BSA-approved plans; the Premises be kept free and clear of graffiti; the special permit be limited to a term of five years, to expire on September 15, 1997; these conditions appear on the certificate of occupancy; the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with the requirements of the Zoning Resolution

On September 23, 1997, under the subject calendar number, the Board granted a special permit, under Z.R. §§ 11-411, 11-412, and 11-413, to permit the proposed renewal of an existing variance and change of use from a gasoline service station and accessory uses (UG 16) to an automobile repair shop (UG 16) and the enlargement and alteration of the structure on the site, on condition that all work substantially conform to drawings as they apply to the objection noted, filed with the application; the special permit be limited to a term of ten years to expire on September 23, 2007; there be no outdoor repairs on the site; the curb cut on 76th Road be removed and the curb restored within 90 days; lightning be positioned down and away from the nearby residences; fencing, screening and landscaping be maintained in accordance with BSA-approved plans; signage be limited in accordance with BSA-approved plans; there be no parking of vehicles on the sidewalk; there be no overnight storage of trucks on the site; Premises be kept clean and free of graffiti; above conditions appear on the certificate of occupancy; the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative

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Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with the requirements of the Zoning Resolution.

On September 15, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure, amended the special permit to extend the term for ten years, to expire September 23, 2017, and grant an extension of time to obtain a certificate of occupancy to March 15, 2010, 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(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension of term and extension of time to obtain a certificate of occupancy. Because this application was filed less than two years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant provided images of the Premises to demonstrate continuous use. The applicant further represents that substantial prejudice would result without the grant of the waiver to allow filing of the extension of term because the owner could lose his business.

Moreover, the applicant represents that there have been no changes to the Premises or its operations. In particular, the applicant notes: "Services include automotive repair and maintenance including oil change, inspections and brakes. No painting, welding, or body work is offered. The business operates between 7:00 AM and 6:00 PM on Mondays through Fridays and 7:00 AM through 4:00 PM on Saturdays. The Premises [are] closed on Sunday. The parking spaces in front of the office and on the north side of the Premises are used for incoming vehicles and those waiting for service. The parking spaces on the south side of the Premises are used for completed vehicles and vehicles awaiting parts of repair authorization."

Over the course of hearings, the Board expressed concern over the conditions of the Premises, specifically the location of landscaping, fencing, dumpster, wheel stops, and bollards and the amount of parking available. The Board further expressed concerns about the Premises' property boundary, which may potentially extend onto city property. Finally, the Board requested further information about operations at the Premises and ongoing compliance with prior terms of the grant. In response, the applicant submitted revised architectural plans clarifying the nature, detail, and location of landscaping, fencing, dumpster, and bollards. The applicant also supplied photographs which showed the placement of these items at the Premises. The applicant noted on those plans that there are 22 spaces available at the

Premises and states that this number is sufficient. Additionally, the applicant provided a survey of the property which determined that the asphalt extends over the property line by approximately five feet. On the plans, the applicant committed to remove and repave this portion of the asphalt in accordance with Department of Transportation standards. Furthermore, the applicant revised the statement of facts to include more details about the operation of the site which notes that there no repairs occurring outdoors and there is no parking on the sidewalks.

The Fire Department states, by letter dated September 18, 2019, that the motor vehicle repair shop is current with their Fire Department permits with respect to its use as a motor vehicle repair shop, storage of combustible liquids and gases, and a 275-gallon above ground tank. Based on its review of this application, the Fire Department has no objection to this application.

Based upon its review of the record, the Board has determined that the requested rule waiver, extension of term, and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amend* the resolution, dated September 15, 2009, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on September 23, 2027; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received November 25, 2020 - Eight (8) sheets'; and *on further condition*:

THAT the term of this grant shall be limited to ten years, expiring September 23, 2027;

That there shall be no outdoor repairs on site;

that there shall be no parking of vehicles on the sidewalk;

THAT the asphalt that is on City-owned property shall be removed and replaced with cement sidewalk as per BSA-approved plans;

THAT the building, asphalt, landscaping, bollards in place shall be maintained in first rate condition, and replaced as needed as per the BSA-approved plans;

THAT the Premises shall be kept clean and free of graffiti;

THAT lighting shall be directed down and away from nearby residential properties, with zero ('0.0') light spread on adjacent residential lots;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No.55-97-BZ'), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by June 22, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 14, 2020.

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## 256-02-BZ

APPLICANT – Friedman & Gotbaum LLP, by Shelly S. Friedman, Esq.

SUBJECT – Application March 16, 2020 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2020. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 7501, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4  
Negative:.....0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

This is an application for an extension of time to complete construction pursuant to a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the conversion of a six-story industrial building to residential use, and expired on May 1, 2020.

A public hearing was held on this application on November 9, 2020, after due notice by publication in *The City Record*, and then to decision on December 14, 2020.

The Premises are located on the west side of Imlay Street, between Commerce Street and Verona Street, within an M2-1 zoning district, in Brooklyn. With approximately 550 feet of frontage along Imlay Street, a depth ranging between 132 feet and 137 feet, and 73,073 square feet of lot area, the Premises are occupied by a six-story residential building.

The Board has exercised jurisdiction over the Premises since December 23, 2003, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the conversion an existing six-story industrial building to residential use on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the following activities be implemented prior to construction to ensure that there will not be any potential hazardous materials effects and/or impacts on the proposed residents: (1) Ground-penetrating radar to determine if the 20,000 gallon petroleum underground storage tank is located at the subject

site; (2) Testing the fluid contained within the transformers for PCBs; (3) Phase II investigation to determine the nature and extent of the suspect liquid observed through a hole adjacent to the 20,00 gallon above-ground storage tank at the north end of the building; the Premises be maintained free of debris and graffiti; any graffiti located in the Premises be removed within 48 hours; parking be provided according to BSA-approved plans; the applicant comply with all applicable fire safety measures; all exits from the commercial and residential spaces comply with applicable provisions of the Building Code, with compliance to be determined by the Department of Buildings; the conditions be noted in the certificate of occupancy; substantial construction be completed in accordance with Z.R. § 72-23; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Judicial proceedings, including appeals, were instituted to review the Board’s decision under the subject calendar number, and the applicant submits that, consistent with Z.R. § 72-23, the date of entry of the final order in such proceedings was March 18, 2008, in *Red Hook/Gowanus Chamber of Commerce v. New York City Bd. of Standards & Appeals*, 49 A.D.3d 749 (N.Y. App. Div. 2008).

On May 1, 2012, under the subject calendar number, the Board granted an extension of time to complete construction for four years, expiring May 1, 2016, on condition that substantial construction be completed by May 1, 2016.

By letters dated January 7, 2013, April 29, 2013, and April 9, 2015, under the subject calendar number, the Board approved minor modifications to the Board-approved plans.

On December 5, 2017, under the subject calendar number, the Board granted an extension of time to complete construction for four years, expiring May 1, 2020.

By letter dated January 17, 2018, under the subject calendar number, the Board approved minor modifications to the Board-approved plans.

The time to complete construction having expired, the applicant now seeks an extension of time.

The applicant represents that, after the Board’s 2017 extension, the applicant discovered significant errors by the previous contractor who failed to perform adequate roof waterproofing and a proper setup of the mechanical design system. The applicant spent approximately five months engaging a new contractor, must wait for warm weather to complete the roof waterproofing work, and anticipates approximately one year to complete the remaining work, which is currently 95 percent complete.

Based upon its review of the record, the Board has determined that the requested extension of time to complete

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construction is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *amend* the resolution, dated December 23, 2003, as amended through December 5, 2017, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for three 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 1, 2023, *on condition*:

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 parking shall be provided according to BSA-approved plans;

THAT the applicant shall comply with all applicable fire safety measures;

THAT all exits from the commercial and residential spaces shall comply with applicable provisions of the Building Code, with compliance to be determined by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 256-02-BZ”), shall be obtained within three 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 1, 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.

THAT the Department of Buildings must 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 14, 2020.

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## 677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.  
SUBJECT – Application September 4, 2020 – Extension of time to obtain a Certificate of Occupancy of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (Carriage House) with incidental painting and spraying which expired on October 30, 2019; Waiver of the Board’s Rules of Practice and Procedures. C2-2/R4 zoning district.

PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

## COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to February 22-23, 2021, at 10 A.M., for continued hearing.

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## 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

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 22-23, 2021, at 10 A.M., for decision, hearing closed.

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## 207-68-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Steve Green/Deerfield Meadows Inc., owner.

SUBJECT – Application September 21, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the use manufacture and storage of paper vacuum bags UG’s 16 & 17), with accessory parking, which expired on June 18, 2013; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north Newburg Street. Block 10315, Lot 0134. Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for continued hearing.

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## 125-97-BZ

APPLICANT – Gerald J. Caliendo, AIA, for Renato Devincenzi, Carranza Italy Inc., owner; 61-01 Woodhaven Boulevard Assoc. LLC., lessee.

SUBJECT – Application March 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of an of a one-story and cellar retail (UG 6) building with accessory parking for 21 vehicles which expired on March 10, 2018; Waiver of the Board Rules of Practice and Procedures. R7A & R4 zoning districts

PREMISES AFFECTED – 61-01 Alderton Street, Block



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3101, Lot 1, Borough of Queens.

## COMMUNITY BOARD #6Q

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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## 24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164<sup>th</sup> Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

## COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 8-9, 2021, at 10 A.M., for decision, hearing closed.

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## 85-10-BZ

APPLICANT – Akerman LLP, for DG Fordham, LLC, owner; Fordham Fitness Group, LLC, lessee.

SUBJECT – Application February 4, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expired on February 1, 2020. C4-4 zoning district.

PREMISES AFFECTED – 309-311 East Fordham Road, Block 3154, Lot 94, Borough of Bronx.

## COMMUNITY BOARD #7BX

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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## 189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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## 2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application February 3, 2020 – Extension of Time to Obtain a Certificate of Occupancy. M1-2/R6B zoning district.

PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 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** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

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Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0  
THE RESOLUTION –

The decision of the Department of Buildings, dated January 10, 2019, acting on Alteration Type 1 Application No. 520362134, reads in pertinent part:

- “1. GCL 36 BC 502.1: The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:
- A) No certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.
  - B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code.”

This is an application under General City Law § 36 to permit, in an R3X zoning district, in the Special South Richmond Development District, the construction of a building that does not front on a mapped street.

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with continued hearings on May 18, 2020 and July 14, 2020, and then to decision on December 14, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 3, Staten Island, recommends disapproval of this application, stating this application is incomplete without a requested “certified diagram showing where the CCO [Corporate Counsel Opinion] ends on Manee” and “proof of deed restriction”.

The Premises are located at the terminus of Manee Avenue, 900 feet south of the intersection of Manee Avenue and Amboy Road, within an R3X zoning district and in the Special South Richmond Development District, on Staten Island. With approximately 60 feet of frontage on Manee Avenue, 159 feet of depth, and 42, 158 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a three-story, two-family detached residential building with 6,135 square feet of floor area, 0.14 FAR, and three accessory parking spaces. The applicant represents that the proposed building will comply and conform to all requirements of the underlying zoning district and the Special South Richmond Development District. The applicant states that access to the site would be via 20-foot curb cut at the eastern end of the portion of Manee Avenue that is currently paved and proposed to be further improved and would lead to a shared paved area within the borders of the subject zoning lot. The applicant further states that the proposed paved area would include a minimum 30 feet by 30 feet frontage space at the entrance to the proposed residence.

Over the course of hearings, the Board raised

questions about the location and placement of “No Parking” signs and other illuminated and non-illuminated signs at the Premises; road material for the fire apparatus road; the street status of Manee Avenue; and the conditions for the maintenance of the fire apparatus road and of the drive way easement for the Premises and adjacent tax lot 262. In response, the applicant submitted a revised plan which shows the location of three additional “No Parking” signs, address signage to be illuminated, and the road material information for the fire apparatus road/driveway. The applicant also submitted a Staten Island Borough President’s topographical map showing that Manee Avenue has been a CCO street since 1990 and is a record street. Additionally, the applicant presented a draft restrictive declaration committing to the maintenance of the fire apparatus road and the driveway easement.

By letter dated May 22, 2018, the Fire Department states that the Bureau of Operations has reviewed the revised site plans dated October 5, 2017 for the project and offers no further objection. It is understood that the following requirements must be met as conditions of the approval:

- All buildings must be fully sprinklered, which shall be designed and installed in accordance with the New York City Building Code
- All buildings shall be provided with interconnected smoke alarm, which shall be designed and installed in accordance with the New York City Building Code
- Hydrants must be installed in the location shown on the approved plan
- There shall be no parking anytime in the driveway and frontage spaces as shown on the approved plan and indicated by the cross-hatched area
- Illuminated signage indicating the correct address of the building located at 101 & 107 Manee Avenue (as found on the approved plan) must be posted at the curb cut providing access to those properties
- A copy of this letter and plan must be submitted to the Department of Buildings and made part of the official file for both 101 and 107 Manee Avenue

In addition to the filing with the Fire Department, the applicant is also required to call the Bureau of Facilities Management, Plant Operations Engineering office to schedule an appointment to evaluate the plans for any municipal fire alarm box requirements. To expedite their review, applicant should provide a survey of all fire alarm facilities (alarm boxes and FDNY manholes) within a two block radius of the development. If no boxes exist within 1,000 feet of the site, applicant should indicate all utilities poles with their I.D. numbers. It is further understood that the applicant must comply with all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Codes.

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By letter dated April 26, 2018, the New York State Department of Environmental Conservation (“NYSDEC”) states that because the plans submitted with the application dated April 16, 2018 show that the proposed limit of disturbance (i.e. the sediment filter line depicted in the referenced plans) occurs landward of the topographic crest above the 10-foot elevation contour. Therefore, the project is not within the jurisdiction of the NYSDEC under the NYSDEC Tidal Wetlands Act (Article 25 of the Environmental Conservation Law). Therefore, a NYSDEC tidal wetlands permit is not required to construct the project. Any work seaward of the disturbance limit depicted in the referenced plans may require a NYSDEC tidal wetlands permit. Also, the property is not within the jurisdiction of the Freshwater Wetlands Act (Article 24 of the Environmental Conservation Law). Therefore, a NYSDEC freshwater wetlands permit is not required to alter or develop this referenced property.

By letter dated April 11, 2019, the Department of City Planning states that the application (N190190RCR, N190247RCR, N190192RCR, & N190191RCR) to facilitate the reapportion two zoning lots (block 6751, Lots 260 and 273) and develop five, two-family detached homes on a single tract of land which contains Designated Open Space was approved as follows:

1. (N190190RCR) – An application for the grant of a certification to development on land which contains Designated Open Space to Zoning Resolution Section 107-22 at the above referenced location was approved by the City Planning Commission on March 27, 2019, and;
2. (N190247RCR) – An application for the grant of a certification for public pedestrian ways to Zoning Resolution Section 107-222 at the above referenced location was approved by the City Planning Commission on March 27, 2019, and;
3. (N190192RCR) – An application for certification of future subdivision to reapportion two zoning lots by the City Planning Commission pursuant to Section 107-08 of the Zoning Resolution was approved by the City Planning Commission on March 27, 2019, and;
4. (N190191RCR) – An application for certification by the Chair of the City Planning Commission to the Department of Buildings pursuant to Section 107-121 of the Zoning Resolution that sufficient school capacity exists to accommodate 10 dwelling units at the above referenced location was approved on March 27, 2019.

This application (N190190RCR, N190247RCR, N190192RCR, & N190191RCR) has been approved solely pursuant to sections 107-08, 107-121, 107-22, and 107-223 of the Zoning Resolution and is subject to verification by the Department of Buildings for compliance with all other

applicable provisions of the Zoning Resolution.

By letter dated October 28, 2020, the Department of Environmental Protection (“DEP”) states that it has reviewed and approved the Internal Water Main (“IWM”) plan for the project subject to the following: This approval is for an 8" x 4" wet connection (“W.C.”) on the 8" city water main in Manee Avenue and a corresponding 4" diameter IWM. The approval is valid for a two-year period from the date of this approval. No W.C. permit will be issued until the following are obtained: NYC Department of Buildings (“DOB”) approval for IWM; Bureau of Customer Service (“BCS”) approval for meter type and location; and Cross Connection Control Unit (“CCCU”) approval for Backflow Prevention assembly. The applicant must contact DEP Water and Sewer Connections Unit before the date of commencement of the work to schedule an inspection. Valid permits issued at the Licensed Plumber must be on the worksite. No permits for service connections will be issued until the as-built is submitted and water sample is approved by DEP. IWM and connections to such main can be installed only in accordance with RCNY, Title 15, Chapter 20.

The Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated January 10, 2019, acting on Alteration Type 1 Application No. 520362134, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 2, 2020”- two (2) sheet; and *on further condition*:

That all buildings must be fully sprinklered, which shall be designed and installed in accordance with the New York City Building Code;

That all buildings shall be provided with interconnected smoke alarm, which shall be designed and installed in accordance with the New York City Building Code;

That hydrants must be installed in the location shown on the approved plan;

That there shall be no parking anytime in the driveway and frontage spaces as shown on the approved plan and indicated by the cross-hatched area;

That illuminated signage indicating the correct address of the building located at 101 & 107 Manee Avenue (as found on the approved plan) must be posted at the curb cut providing access to those 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. 2019-19-A”), shall be obtained within four years and an additional six months in light of the current state of emergency

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declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 6, 2025;

That the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

That this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

That the approved plans shall be considered approved only for the portions related to the specific relief granted; and

That the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2020.

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## 2019-282-A thru 2019-291-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cord Meyer Development, owner.

SUBJECT – Application November 8, 2019 – Proposed construction two-family townhome not fronting on a final mapped street contrary to General City Law §36. R5 zoning district.

PREMISES AFFECTED – 18-26 to 18-50 Bay Lane, Block 5872, Lot 102, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Application denied.

THE VOTE –

Affirmative: Vice-Chair Chanda and Commissioner Ottley-Brown.....2

Negative: Chair Perlmutter, Commissioner Sheta, and Commissioner Scibetta.....3

THE RESOLUTION –

The decisions of the Department of Buildings, dated October 9, 2019, acting on Alteration Type 1 Application Nos. 421543057, 421543039, 421543011, 421542986, 421542977, 421542968, 421542959, 421542931, 421542806, and 421542815, read in pertinent part:

“Proposed development is not fronting City Street, only fronting a proposed private street. Contrary to GCL 36.”

This is an application under General City Law § 36 to permit, in an R5 zoning district, the construction of ten two-family, semi-detached residences that do not front on a mapped street.

#### I.

A public hearing was held on this application on July 27, 2020, after due notice by publication in *The City Record*, with a continued hearing on October 19, 2020, and then to decision on December 14, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application, with

the following conditions: sanitation pickups to not happen during school pickup and drop-off hours; a homeowners association provide a security guard for the first six months up to 60% occupancy; limiting of exit directions during school drop-off and pickup hours; possibly contributing to the school for improvements; and working to move the bus stop on 18th Avenue.

The Board received a letter of support from a City Council member, and four letters of objection citing concerns over increased traffic, congestion, and potentially unsafe and unhealthy conditions at the proposed work site.

#### II.

The Premises are located on the west side of 212th Street, between 18th Avenue and 23rd Avenue, within an R5 zoning district, in Queens. The Premises have approximately 700 feet of frontage along 212th Street, 22,492 square feet of lot area, and are currently vacant.

#### III.

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 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.*”

The Board had taken an expansive view of this authority, making exceptions for developments of all sizes, which permitted the buildings on them to be accessed by unmapped streets, while imposing few if any safeguards as conditions of the Board’s grants. In the cases where such safeguards were imposed, they relied on the representation of the developers that a Homeowners Association Agreement (“HOA”) would oblige homeowners to maintain the private streets and enforce no-parking regulations on

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narrow unmapped private streets to allow emergency vehicle access.

In recent years, however, the Board conducted site visits to developments constructed pursuant to waivers of General City Law § 36(2) and heard considerable testimony that these safeguards have proven inadequate.

Consequently, the Board has over the last several years required applicants to affirmatively demonstrate that it can meet the findings set forth in General City Law § 36(2): that both enforcing the mapped-street access requirement “would entail practical difficulty or unnecessary hardship” and that “the circumstances of the case do not require the structure to be related to existing or proposed streets or highways.”

#### IV.

The applicant proposes to construct 33 two-family, semi-detached residential buildings but seeks relief from the Board to construct 10 residences, which would front on a proposed private road to be known as Bay Lane. The applicant states that Bay Lane would be 30 feet wide and consist of a loop with entrance and exit from 212th Street, a mapped street.

The Premises would constitute a single zoning lot, and the existing tax lot would be apportioned in conjunction with this development into new tax lots. Each proposed building would be three stories with a basement, with 4,000 square feet of floor area, and 0.75 FAR. The applicant represents that the proposed buildings would comply with all applicable zoning regulations. Because ten residences would not have access to a mapped street, the applicant seeks the relief sought herein.

The applicant submits that developing the Premises as of right would result in practical difficulty or unnecessary hardship because the Premises have limited frontage on mapped streets around its perimeter in relation to its lot area, making it impracticable to provide access to the interior of the Premises by a mapped street.

In support of this contention, the applicant submitted an as-of-right plan alleging that the Premises could only be developed with 27 residential buildings with an underground parking structure. The applicant submits that the proposed semi-detached building type would be the only way that the perimeter of each residence could achieve the required eight percent frontage as per the Building Code.

Additionally, the applicant further claims that the homeowner’s association, which only consisted of one- and two-family homes, would not permit another type of residence, such as a rental property, in the development, thereby limiting the types of properties that it could illustrate on its as-of-right plans.

The applicant’s alleged hardship is that it had not originally planned to appear before the Board with this application. The applicant states that it only appeared before the Board after all other avenues were exhausted in attempts to develop the Premises so that it could have a high rate of return while adhering to community needs and standards.

In describing Bay Lane, the applicant maintains that this proposed private road would be designed in such a way

as to provide 84 accessory parking spots for the proposed buildings and plans to have the HOA enforce any violations of the parking regulations.

In describing how the proposed residences would not affect neighborhood character, the applicant declares that the design of the homes gives the appearance of having two frontages that would not disrupt the neighborhood character.

#### V.

The Board has considered all of the applicant’s assertions, but a majority of the Board ultimately finds that relief under General City Law § 36 would not be appropriate for this application.

First, the Board observes that the applicant’s as-of-right plan does not demonstrate the full number or types of residences that could front on 212th Street and, instead, includes parking or townhouses which, by design, could not front on 212th Street.

In response to the applicant’s claimed hardship, the Board notes that the applicant’s reference to the New York State Attorney General’s denial of the condominium plan is unrelated to the question of frontage. The Board notes that this argument constitutes a business decision, thereby constituting a self-created hardship.

Next, the Board notes that the proposed width of Bay Lane would be inadequate to allow for on-street parking and that the applicant’s proposed plan, that the HOA would enforce the parking regulations, does not seem feasible.

Moreover, the Board finds that the proposed siting of these ten homes would negatively affect the neighborhood character as they would be the only dwellings that do not front on 212th Street.

Under General City Law § 36, the Board does not evaluate the marketability of one potential development against another, but whether the requirement that the dwellings front on a mapped street would entail practical difficulty or unnecessary hardship. 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.

Additionally, the applicant has failed to show 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. 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.

Notwithstanding the Board’s majority position, two commissioners would grant this application for relief under General City Law § 36. One commissioner notes that, based on the date the application was filed, the applicant’s hardship argument is sufficient to warrant a grant of the waiver. Additionally, because the parking layout on Bay Lane exceeds the 66 required as required by the Zoning Resolution, this commissioner agrees the layout of the proposed street acceptable. Meanwhile, another commissioner notes the applicant’s presentation of a historical development and reasoning around the required frontage at each residence clarifies the types of buildings

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illustrated in its as-of-right plans and strengthens the applicant's hardship argument. Accordingly, two commissioners would grant this application.

By letter dated July 19, 2017, the Fire Department states that the Bureau of Operations has reviewed the revised site plans dated July 5, 2017, and the variance application and the installation of an internal water main with three new hydrants for the above site in the borough of Queens and offers no objection. Two approval plans numbered C-301.00 & C-303.00 are made part of this letter, this approval is conditional based on the following requirements: Each residential unit shown on the approval plan must be fully sprinklered; Bay Lane shall have NO PARKING ANYTIME; signs shall be posted complying with NYC Fire Code Section 5032.7.2.1. Enforcement of the no parking requirement will be the responsibility of the homeowners association subject to summons and towing if violated; Two off-street parking spaces are required for each residential unit; There shall be hydrant within 250 feet of every main entrance to each building and spacing in between every hydrant shall be no greater than 250 feet; The private fire hydrant system shall be maintained in good working order at all times and shall be repaired when defective. Additions, repairs, alterations and servicing shall comply with approved DEP standards

In addition to filing with the Fire Department Bureau of Operations, the applicant must call the Bureau of Fire Communications, Outside Plant Operations Engineering Office to schedule an appoint to evaluate plans for any alarm box requirements.

By letter dated July 31, 2019, the Department of Environmental Protection ("DEP") states that it has reviewed and approved the Internal Water Main ("IWM") plan for the project subject to the following: This approval is for an 12" x 6" wet connection ("W.C.") on the 12" city water main in 212th Street and for an 12" x 6" wet connection on the 12" city water main in 18th Avenue and a corresponding 8" dia. IWM, subject to the NYC Department of Buildings approval; This approval is valid for a two-year period from the date of this approval. The applicant must contact DEP Water and Sewer Connections Unit before the date of commencement of the work to schedule an inspection. IWM and connections to such main can 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 IWM. Valid permits issued to the Licensed Plumber must be on the worksite. An approval for Backflow Prevention Assembly and a Vault must be obtained from Cross Connection Control Unit prior to approval of a permit application.

## VI.

Based upon its review of the record, the Board has determined that this approval is not eligible for relief under General City Law § 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,  
December 14, 2020.

## 2020-60-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Ashland Dekalb LLC, owner.

SUBJECT – Application July 20, 2020 – Application filed pursuant to General City Law ("GCL") 35, to allow the proposed development of a property within the mapped but unbuilt portion of a street; Waiver of the applicable height and setback regulations pursuant to 72-01 (g). C6-4 Special Downtown Brooklyn District.

PREMISES AFFECTED – 180 Ashland Place, Block 2095, Lot(s) 25, 26, 29, 7501, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated August 26, 2020, acting on New Building Application No. 321590113, reads in pertinent part:

1. Section 35 GCL: Proposed development is located partially within the bed of a mapped street (Ashland Place). Approval from Board of Standards and Appeals is required, pursuant to Section 35 of the General City Law.

§ 72-01(g): Proposed development contains bulk non-compliances resulting from proposed location partially within the bed of a mapped street (Ashland Place). Approval from Board of Standards and Appeals is required, pursuant to Section 72-01(g) of the Zoning Resolution.

This is an application under General City Law § 35 and Z.R. § 72-01(g) to permit construction within the bed of a mapped, but unimproved, street.

A public hearing was held on these applications on November 10, 2020, after due notice by publication in *The City Record*, and then to decision on December 14, 2020. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 2, Brooklyn, waived its recommendation of this application. The Board also received two letters in support of this application.

The Premises are bounded by Ashland Place to the east, DeKalb Avenue to the north, and Rockwell Place to the west, within a C6-4 zoning district and in the Special Downtown Brooklyn District, in Brooklyn. With approximately 213 feet of frontage along Ashland Place, 164 feet of frontage along DeKalb Avenue, 161 feet of frontage on Rockwell Place, and 34,760 square feet of lot area, the Premises are occupied by existing buildings that will be demolished for the proposed development, with the

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exception of an existing building on tax lot 7501.

The applicant proposes to construct a new mixed-use residential and commercial building with a two-story base with frontage along Ashland Place and DeKalb Avenue, and a tower that would setback 10 feet from the base on Ashland Place and would rise to a height of 50 stories. The proposed building would be partially located in the bed of a mapped but unbuilt portion of Ashland Place, for which the applicant requests the General City Law § 35 waiver. The applicant further represents that it is not requesting any waivers for bulk because the proposed building would comply with the bulk requirements of the underlying C6-4 zoning district and will be consistent with the intent of the Special Downtown Brooklyn District.

The Board notes that, pursuant to General City Law § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements. The Board notes that the bulk waivers proposed shall only be as necessary to address non-compliance resulting from the location of the development within and outside the unimproved streets, 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.

The applicant presents an as-of-right plan and states that the front wall of an as-of-right development would have to be located 30 feet from the property line, and the entirety of the building would have to be located within a lot depth of only 70 feet. As such, this would result in a 79-story building with a base at a depth of only 40.5 feet and a tower with a depth of only 30.5 feet. The applicant represents that such narrow floor plates would not allow for a feasible development.

By letter dated October 19, 2020, the Office of the Brooklyn Borough President states that, according to records maintained by the Borough of Brooklyn's Topographical Bureau, Ashland Place, between DeKalb Avenue and Fulton Street, is shown on the City Map at a width of 80 feet and was legally open on October 14, 1839. The street was originally mapped at a width of 50 feet. Then, it was widened by 30 feet on its westerly side by Alteration Map B.P. No. L-998, which was approved by the NYC Board of Estimate on March 9, 1944 and filed on April 17, 1944. Records show that the easterly 50-foot width (the original width) of this segment of Ashland Place is in City ownership for street purposes (title confirmed on October 14, 1839). The Office of the Brooklyn Borough President has no record of City ownership or interest for street purposes to the remaining westerly 30-foot width (the widening).

By letter dated October 16, 2020, the Department of Environmental Protection ("DEP") states that, based on the DEP maps, there are existing 60"-diameter combined sewer and 20"-diameter City water main in the bed of Ashland Place between DeKalb Avenue and Fulton Street. DEP has no records of the Drainage Plan for the above referenced location. The applicant submitted an Architectural Survey, dated August 20, 2020, revised on September 30, 2020, prepared by John Vida, Licensed Land Surveyor. The

Survey shows 80'-0" width of the mapped Ashland Place, between DeKalb Avenue and Fulton Street, from which 50'-0" will be available for the installation, maintenance and/or reconstruction of the future and existing sewers and watermain. Based on the above, the DEP has no objections to the application.

By letter dated November 4, 2020, the Department of Transportation ("DOT") states that, according to the Brooklyn Borough President's Topographical Bureau, Ashland Place between DeKalb Avenue and Fulton Street is mapped at 80 feet and the City does not have title to a portion. DOT reviewed all pertinent documents submitted and has the following comments:

The site currently proposes to construct an additional 5 feet of sidewalk along Ashland Place, increasing the total sidewalk width to approximately 12 feet. Please ensure that the additional five feet from the building line will be dedicated as a publicly accessible sidewalk.

Please ensure that there is a minimum of approximately ten feet of sidewalk maintained in front of the proposed vestibule on Ashland Place. Please note that the applicant is required to submit the Builder's Pavement Plan (BPP), as filed with the Department of Buildings (DOB), to DOT for review and approval by DOT's Sidewalk Inspection Management (SIM) and Pedestrian Ramp Program (PRP).

DOT requires the applicant to coordinate with the Brooklyn Borough Engineer's Office of DOT to determine the loading/unloading zone along Ashland Place during the BPP

review process and subsequent installation of necessary signage.

The applicant submits that an engineer has been retained to prepare the BPP and states that, in accordance with the requirements presented by DOT in their letter of November 4, 2020, the BPP will show the five feet of property adjacent to the Ashland Place property line currently under the building owner's title as publicly accessible sidewalk. The sidewalk in this area and extending to the building facade will be of the same material and color as the adjacent sidewalk and curb. The BPP will be filed with DOB as part of the required documentation to obtain a building permit. The BPP will include notes stating that the 5-foot adjacent area will be open to the public except for one day a year as required to retain private ownership. As part of the review process, the BPP will be submitted to DOT's Sidewalk Inspection Management (SIM) group, and to the Pedestrian Ramp Program (PRP) for required approvals. Following DOB approval of the BPP, the contractor selected by the owner will pull the permit to construct the BPP work, and such permit will be signed-off based on a final inspection conducted by DOB personnel. The sidewalk within the public right-of-way and the five-foot adjacent area will be subject to standard maintenance and enforcement in accordance with NYC Administrative Code.

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By correspondence dated November 25, 2020, DOT states that the applicant revised the plans to include DOT notes and are satisfactory.

By letter dated November 4, 2020, the Fire Department states that the proposed development will be providing two Fire Department connections for a proposed combination (standpipe and sprinkler) fire suppression systems, with connections to be located on Ashland Place and DeKalb Avenue. There is a fire hydrant, located directly across the street from the development on Ashland Place and a fire hydrant in front on the development located on DeKalb Avenue. Based upon the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, under the powers vested in the Board by Section 35 of the General City Law, to permit construction within the bed of a mapped, but unimproved, street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 23, 2020"- One (1) sheet; and *on further condition*:

THAT an additional 5 feet of sidewalk along Ashland Place, increasing the total sidewalk width to approximately 12 feet, shall be constructed and the additional five feet from the building line shall be dedicated as a publicly accessible sidewalk;

THAT there shall be a minimum of approximately ten feet of sidewalk maintained in front of the proposed vestibule on Ashland Place;

THAT the applicant shall submit the Builder's Pavement Plan (BPP), as filed with the Department of Buildings (DOB), to DOT for review and approval by DOT's Sidewalk Inspection Management (SIM) and Pedestrian Ramp Program (PRP);

THAT the applicant shall coordinate with the Brooklyn Borough Engineer's Office of DOT to determine the loading/unloading zone along Ashland Place during the BPP review process and subsequent installation of necessary signage;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-60-A"), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York, resulting from an outbreak of novel coronavirus disease, by June 22, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

THAT this approval is limited to the relief granted by

the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2020.

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## 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

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 22-23, 2021, at 10 A.M., for decision, hearing closed.

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## 2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 04699, Lot 22, Borough of Queens.

### COMMUNITY BOARD #7Q

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 22-23, 2021, at 10 A.M., for decision, hearing closed.

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## 2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over March 22-23, 2021, at 10 A.M., for adjourned hearing.

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## 2019-176-A

APPLICANT – Rosenberge & Estis, P.C., for Union Temple of Brooklyn, owner.

SUBJECT – Application June 18, 2019 – Appeal of a New York City Department of Buildings determination dated May 21, 2019, that musical and spoken word events held in the Temple’s sanctuary and ballroom are not “accessory use”. R8X zoning district.

PREMISES AFFECTED – 17 Eastern Parkway, Block 1172, Lot 6163, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Laid over March 22-23, 2021, at 10 A.M., for continued hearing.

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## 2019-182-A

APPLICANT – Dominic V. DeSantis – McLaren Engineering Group, for Therese Braddick, New York City department of Parks and Recreation.

SUBJECT – Application June 27, 2019 – Variance pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, waiver of Sections G304.2, Item 6 (no new construction to be located seaward of the Mean High Tide in the V-Zone) and G304.2 Item 2 (The lowest portion of the lowest horizontal structural member of the lowest floor shall be at or above design flood elevation).

PREMISES AFFECTED – 1 Marina Road, Block 1789, Lot 65, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over February 22-23, 2021, at 10 A.M., for adjourned hearing.

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## 2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28<sup>th</sup> Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for

parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28<sup>th</sup> Avenue a/k/a 25-92 41<sup>st</sup> Street, Block 684, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over February 22-23, 2021, at 10 A.M., for adjourned hearing.

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## ZONING CALENDAR

### 2019-161-BZ

#### CEQR #20-BSA-024K

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 –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 7, 2019, acting on Alteration Type 1 Application No. 321942449, 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.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing single-family, two-story with attic detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) (Z.R. § 23-141), open space ratio (Z.R. § 23-141), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on July 14, 2020 after due notice by publication in *The City Record*, with a continued hearing on November 10, 2020, and then

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to decision on December 14, 2020. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 23rd Street, between Avenue I and Avenue J, within an R2 zoning district, in Brooklyn. With approximately 80 feet of frontage along East 21st Street, 100 feet of depth, and 8,000 square feet of lot area, the Premises are occupied by an existing two-story with attic, single-family, detached residence.

The Board notes that its determination herein is subject to and guided by, *inter alia*, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story, with attic, single-family, detached building with 2,794.44 square feet of floor area, (0.35 FAR), open space ratio of 244%, a front yard with a depth of 15'-0", a rear yard with a depth of 32'-5" at the first floor, 25'-0" on the second floor and 32'-0" at the attic level, a northern side yard with a width of 5'-6-1/4" a southern side yard with a width of 52'-5-1/4", and a total height of 39'-11-1/4". The applicant requests an enlargement to the residence's floor area by adding a 0'-4-1/4" brick veneer. The proposed building will have a floor area of 7,174.73 square feet (0.90 FAR), an open space ratio of 53%, a front yard with a depth of 15'-0", a rear yard with a depth of 20'-0" at the first floor, 25'-0" at the second floor, and 32'-0" at the attic, a northern side yard measuring 5'-2", a southern side yard measuring 10'-0", and a total height of 37'-0".

At the Premises, a maximum of .50 FAR (4,000 square feet of floor area) is permitted, a minimum of 150% open space ratio is required, and a rear yard with a minimum depth of 30'-0" is required, pursuant to Z.R. §§ 23-141 and 23-47.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that all but two of the 107 qualifying residences have an OSR of 150% or less, and 10 residences (9 percent) have an OSR of 53 percent or less. Within the Study Area, 93 of the qualifying residences (87 percent) have an FAR of 0.5 or greater, and 21 residences (20 percent) have an FAR of 0.90 or greater. The applicant submitted a rear yard study demonstrating that, on the subject block of East 23rd Street and the adjacent block of East 22nd Street, of the 30 qualifying residences, 16 (53 percent) have a rear yard measuring 20'-0" or less at the first floor. The applicant also provided photographs and drawings of the streetscape near the residence and represents that the as-built condition will be in context with the subject social block.

Based upon its review of the record and inspections of

the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area.

In response to questions from the Board at hearing about the massing of the proposed building, the applicant submitted a revised design, reflecting a decrease in floor area and an increase in the depth of the front yard at the center of the building from 15'-0" to 19'-0".

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20BSA024K, dated December 14, 2020.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story with attic, single-family, detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, and rear yards contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "November 27, 2020"-Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum FAR of 0.90 (7,174.73 square feet of floor area), a minimum open space ratio of 53%, and a rear yard with a minimum depth of 20'-0" at the first floor, 25'-0" at the second floor, and 32'-0" at the attic, as illustrated on the Board-approved plans; and

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-261-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 June 22, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

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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 14, 2020.

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## 2019-292-BZ

### CEQR #20-BSA-042Q

APPLICANT – The Law Office of Vincent L. Petraro, PLLC., for Epic Tower LLC, owner.

SUBJECT – Application November 8, 2019 – 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.

PREMISES AFFECTED – 41-62 Bowne Street, Block 5181, Lot(s) 0040, Borough of Queens.

### COMMUNITY BOARD # 7Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated October 10, 2019, acting on New Building Application No. 421210022, reads in pertinent part: “Proposed Height exceeds ZR 61-20. BSA approval is required.”

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit—in an R7-1 (C1-2) zoning district—the development of a building that would not comply with height restrictions applicable near major airports (Z.R. § 61-20).

A public hearing was held on this application on July 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on October 5, 2020, and then to decision on December 15, 2020.

Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

Community Board 7, Queens, recommends approval of this application. The Board also received testimony in opposition to this application, citing concerns with construction violations and alleged errors in the above DOB application, which are not before the Board in this application for a special permit.

### I.

The Premises are located on the west side of Bowne Street, in an R7-1 (C1-2) zoning district, in Queens. With approximately 100 feet of frontage along Bowne Street, between 150 and 228 feet of depth, 18,888 square feet of lot area, they are currently improved with a 14-story mixed-use building under construction.

### II.

The applicant now proposes to develop a mixed-use building with a total of 87,647.5 square feet of floor area (64,162.5 square feet residential, 11,395.5 square feet community facility, and 12,089.5 square feet commercial) that would rise to a building height of 215.31 feet NAVD88, a parapet-wall height of 219.13 feet NAVD88, a bulkhead height of 225.46 feet NAVD88, and required air-traffic-obstruction lighting (the “Proposed Building”).

The Proposed Building could not be constructed as of right because the Premises are located within a “flight obstruction area” for LaGuardia Airport and because the Proposed Building would penetrate the allowable height of 221.9 NAVD88 at the center of the Premises. Z.R. § 61-20.

### III.

The Zoning Resolution vests the Board with discretion to “permit the construction, *enlargement*, or reconstruction of a *building or other structure* in excess of the height limits established under Sections 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection Within any Flight Obstruction Area).” Z.R. § 73-66 (emphasis in original to indicate defined terms).

### A.

As a preliminary matter, the applicant must provide “a site plan, with elevations, showing the proposed *building or other structure* in relation to such maximum height limits.” *Id.* The record reflects, and the Board acknowledges, that the applicant has done so in this application.

### B.

The Board also notes that this application has been “refer[red] . . . to the Federal Aviation Administration for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways.” *Id.*

Having reviewed application materials for construction of the Proposed Building, the Federal Aviation Administration issued a Determination of No Hazard to Air Navigation to the center of the Premises (the “Center Point”) on March 7, 2019, under Aeronautical Study No. 2018-AEA-14938-OE at latitude 40-45-27.53N, longitude 73-49-22.91W, 72 feet site elevation, 165 feet above ground level, and 237 feet above mean sea level (the “FAA No Hazard Determination”).

The reviewed materials include a survey and five study points at the corners of the Premises—Aeronautical Study Nos. 2018-AEA-14939-OE at the northwest, 2018-AEA-14940-OE at the northeast, 2018-AEA-14941-OE at the southeast, and 2018-AEA-14939-OE at the southwest—and at the Center Point (analyzed in the FAA No Hazard Determination) keyed to maximum heights in NAVD88, and the applications were also circulated to the Port Authority of New York and New Jersey. The applicant represents that all of these corner points studied comply with applicable height restrictions under Z.R. § 61-20 and accordingly require no authorization from the Board.

The FAA No Hazard Determination concludes that, at the Center Point, the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization

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of the navigable airspace by aircraft or on the operation of air navigation facilities” based on an “aeronautical study [that] considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures.”

However, the FAA No Hazard Determination also specifies the following conditions:

As a condition to this Determination, the structure is to be marked or lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, red light— Chapters 4, 5 (Red), & 12. Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2). . . .

Any height exceeding 165 feet above ground level (237 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 09/07/2020 unless: (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration is received by this office. (b) extended, revised, or terminated by the issuing office. (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application. . . .

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Claus Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power or the addition of other

transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit a notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

Accordingly, the record reflects, and the Board acknowledges, that the Federal Aviation Administration has issued a satisfactory report that the Proposed Building “will [not] constitute a danger to the safety of air passengers or disrupt established airways.” Z.R. § 73-66.

## C.

The applicant submits that the Proposed Building “would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed *building*, to other *buildings* in the vicinity or to the safety of air passengers, and would not disrupt established airways.” Z.R. 73-66.

In support of this contention, the applicant notes the FAA No Hazard Determination’s conclusion that, at the Center Point, the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities.” The applicant submits that this conclusion reflects a thorough technical review by an expert federal agency with exclusive jurisdiction over commercial airports and the flight space that surrounds them—which makes the Federal Aviation Administration uniquely qualified to make determinations about potential hazards to airports, air space, air passengers and nearby structures.

Additionally, the Port Authority of New York and New Jersey states, by letter dated April 15, 2019, that it has no additional comments to the FAA No Hazard Determination but “request[s] that all conditions stated in the determination be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. . . . [S]eparate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceeds the overall heights as described in the determinations prior to any construction. Studies for this equipment should be filed at least 90–120 days prior to the start of operations.”

Accordingly, the Board believes it appropriate to defer to the Federal Aviation Administration’s determination as to any potential hazards posed by proposed construction, and the Board finds that the Proposed Building would not constitute a hazard to its occupants, to other buildings in the vicinity, or to the safety of air passengers and would not

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disrupt established airways.

## D.

In addition to the foregoing, this application is subject to and guided by Section 73-01 through 73-04 of the Zoning Resolution, including the general findings of Section 73-03.

The applicant submits that the advantages to the community from construction of the Proposed Building outweigh any disadvantages. The applicant notes that there would be no hazards associated with the increased height to be authorized by this application, as reflected in the FAA No Hazard Determination.

The applicant also studied building heights in the vicinity, finding numerous taller building than the Proposed Building. For instance, buildings in the area have heights of 230 feet, 229 feet, 227 feet, 194 feet, 186 feet, 177 feet, 176 feet, 168 feet, 166 feet, 149 feet, which exceed the height of the Proposed Building at 148 feet and demonstrate that the height of the Proposed Building is consistent with the neighborhood's built environment.

The Board notes that its review herein is limited to the request for an increase in height above that allowed as of right. Additionally, all conditions contained in the FAA No Hazard Determination have been adopted and incorporated into the Board's grant herein, so any act violating the FAA No Hazard Determination further constitutes a violation of this decision and the Zoning Resolution.

Accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantages to the community at large due to this special permit is outweighed by the advantages to be derived by the community, and the proposed project will not interfere with any pending public improvement project.

## IV.

With respect to environmental review, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA042Q, dated December 15, 2020.

## V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-66 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-66 and 73-03 to permit—in an R7-1 (C1-2) zoning district—the development of a building that would not comply with height restrictions applicable near major airports (Z.R. § 61-20); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received December 15, 2020”—fourteen (14) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a building height of 215.31 feet NAVD88, a parapet-wall height of 219.13 feet NAVD88, a bulkhead height of 225.46 feet NAVD88, and required air-traffic-obstruction lighting, 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. 2019-292-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 May 15, 2025;

THAT all conditions imposed by the Federal Aviation Administration in its Determination of No Hazard to Air Navigation under Aeronautical Study No. 2018-AEA-14938-OE, issued March 7, 2019, shall be followed, including:

As a condition to this Determination, the structure is to be marked or lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, red light—Chapters 4, 5 (Red), & 12. Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2). . . .

Any height exceeding 165 feet above ground level (237 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 09/07/2020 unless: (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration is received by this office. (b) extended, revised, or terminated by the issuing office. (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application. . . .

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Claus Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to

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heights, power or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit a notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

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 15, 2020.

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**CORRECTION: This resolution adopted on December 14, 2020, under Calendar No. 2020-19-BZ, is hereby corrected to read as follows:**

**2020-19-BZ**

**CEQR #20-BSA-068Q**

APPLICANT – Amato Law Group, PLLC, for Tangram House South Sponsor LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee. SUBJECT – Application March 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) located within a portion of the first floor of an existing building contrary to ZR §32-10. C4-2 zoning districts.

PREMISES AFFECTED – 144-27 39<sup>th</sup> Avenue, Block 4972, Lot 7504, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 7, 2020, acting on DOB Application No. 421913291, reads in pertinent part:

“The proposed swim school is contrary to Section 32-10 of the NYC Zoning Resolution and that the BSA is authorized to approve the swim school pursuant to Section 73-36 of the NYC Zoning Resolution.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C4-2 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 15-story mixed-use commercial and residential building, contrary to Z.R. § 32-10.

A public hearing was held on this application on December 1, 2020, after due notice by publication in *The City Record*, and then to decision on December 14, 2020. Community Board 7, Queens, recommends approval of this application. The Board received two form letters in support of this application and four form letters opposed to this application and citing concerns over potential congestion and adverse noise impacts to the area.

The Premises are located on the north side 39th Avenue between College Point Boulevard and Prince Street, within a C4-2 zoning district, in Queens. With approximately 305 feet of frontage along 39th Avenue, a depth ranging between 142 feet and 160 feet, and 48,708 square feet of lot area, the Premises are occupied by an existing 15-story mixed-use commercial and residential building.

The Board has exercised jurisdiction over the Premises since December 1, 2015, when, under BSA Cal. No. 245-14-BZ, the Board granted a special permit, under Z.R. §§ 73-66 and 73-03, to permit the construction of a residential/commercial/hotel/retail/office/community facility/parking development which exceeds the maximum height limits around airports, contrary to Z.R. § 61-21, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the maximum height of the buildings, including all appurtenances, be as follows: 40 feet site elevation (SE)/186 feet above ground level (AGL)/226 feet above mean sea level (AMSL) (FAA Building Point 1); 40 feet site elevation (SE)/186 feet above ground level (AGL)/226 feet above mean sea level (AMSL) (FAA Building Point 2); 52 feet site elevation (SE)/174 feet above ground level (AGL)/226 feet above mean sea level (AMSL) (FAA Building Point 3); 40 feet site elevation (SE)/186 feet above ground level (AGL)/226 feet above mean sea level (AMSL) (FAA Building Point 4); the proposed 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; the relief granted be only that associated with Z.R. § 73-66 and 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, that the applicant file FAA Form 7460-2, Notice of Actual Construction or Alteration, in the event that the project be abandoned or within five (5) days after

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construction reaches its greatest height (7460-2, Part 2); substantial construction be completed in accordance with Z.R. § 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) 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 of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 7,484 square feet of floor area on a portion of the first floor with a 1,900 square-foot swimming pool, and areas for reception, changing, restrooms, offices, and pool equipment. The PCE will operate, as “Goldfish Swim School,” with the following hours of operation: Monday through Friday, 10:30 a.m. to 8:00 p.m.; Saturday, 8:30 a.m. to 7:30 p.m.; and Sunday, 11:30 a.m. to 6:30 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE is located entirely within the first floor of the existing commercial portion of the Premises and PCE use is consistent with the character of the uses in the surrounding area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE will contain a 1,900 square-foot swimming pool. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that adverse noise impacts are not anticipated and that only light music will be played.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated December 1, 2020, the Fire Department states that the Premises have a fire suppression

system (standpipe and sprinkler) that has been tested and self-certified through the Department of Buildings and a request for an inspection by the Bureau of Fire Prevention's Fire Suppression Unit has been made. The inspection of the standpipe and sprinkler systems will be done at a later date and should not delay the processing of this application. The fire alarm system has also been installed and currently waiting for final approval from the Fire Department. Based upon the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations. Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-068Q, dated December 14, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C4-2 zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing 15-story mixed-use commercial and residential building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received August 28, 2020”—six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring December 14, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-19-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 June 16, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2020.

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## 2020-22-BZ

### CEQR # 20-BSA-071Q

APPLICANT – Amato Law Group, PLLC, for 3312 36<sup>th</sup> Avenue Realty LLC, owner; BHB Investment Holdings Flushing LLC d/b/a Goldfish Swim School, lessee.

SUBJECT – Application March 13, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Goldfish Swim School) within an existing building contrary to ZR §42-10. M1-1 zoning district

PREMISES AFFECTED – 33-12 36<sup>th</sup> Avenue, Block 602, Lot 34, Borough of Queens.

### COMMUNITY BOARD # 1Q

**ACTION OF THE BOARD** – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 24, 2020, acting on DOB Application No. 421950384, reads in pertinent part:

“The proposed swim school is contrary to section 42-10 of the Zoning Resolution and the BSA is authorized to approve the swim school pursuant to section 73-36 of the zoning resolution.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within an M1-1 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story with mezzanine and cellar commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on December 1, 2020, after due notice by publication in *The City Record*, and then to decision on December 14, 2020.

Community Board 1, Queens, recommends approval of this application. The Board received two form letters in support of this application.

The Premises are located on the southwest corner of 36th Avenue and 34th Street, within an M1-1 zoning district, in Queens. With approximately 100 feet of frontage along 36th Avenue, 68 feet of frontage along 34th Street, and 6,765 square feet of lot area, the Premises are occupied by an existing one-story with mezzanine and cellar commercial building. The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE will occupy 6,043 square feet of floor area on a portion of the first floor with a 1,781 square-foot swimming pool, and areas for reception, changing, restrooms, offices, and pool equipment. The PCE will operate, as “Goldfish Swim School,” with the following hours of operation: Monday through Friday, 10:30 a.m. to 8:00 p.m.; Saturday, 8:30 a.m. to 7:30 p.m.; and Sunday, 11:30 a.m. to 6:30 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area. Accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area.

The applicant submits that the PCE will contain a 1,781 square-foot swimming pool. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. The Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof and issued a report, which the Board has deemed to be satisfactory. The applicant submits that adverse noise impacts are not anticipated and that only light music will be played.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated December 1, 2020, the Fire Department states that the Premises have a fire suppression system (sprinkler) that has been tested satisfactorily as witnessed by the Fire Department's Fire Suppression Unit, as well as the fire alarm system. Based upon the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the



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Premises and enforce all applicable rules and regulations.

Accordingly, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-071Q, dated December 14, 2020.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 *permit*, on a site within an M1-1 zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing one-story with mezzanine and cellar commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received August 27, 2020”—eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring December 14, 2030;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-22-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 June 16, 2025;

THAT this approval is limited to the relief granted by

the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2020.

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**CORRECTION: This resolution adopted on December 15, 2020, under Calendar No. 2020-35-BZ, is hereby corrected to read as follows:**

**2020-35-BZ**

**CEQR #20-BSA-082Q**

APPLICANT – Bryan Cave Leighton Paisner LLP, for 4201 Main Street LLC, owner.

SUBJECT – Application April 15, 2020 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C1-2/R6 and R6 zoning district.

PREMISES AFFECTED – 136-18 Maple Avenue, Block 5135, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 15, 2020, acting on New Building Application No. 420666826, reads in pertinent part: “ZR61-21, ZR73-66 Proposed 21 story building height projects beyond the approach surfaces, the transitional surfaces, the horizontal surface, or the conical surface, whichever is more restrictive, within the Airport Approach District of the flight obstruction area. Approval by the BSA is required.”

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit—partially in an R6 (C1-2) zoning district and partially in an R6 zoning district—the development of a 20-story mixed-use building that would not comply with height restrictions applicable near major airports (Z.R. § 61-21).

A public hearing was held on this application on September 15, 2020, after due notice by publication in *The City Record*, with continued hearings on November 10, 2020, and December 14, 2020, and then to decision on December 15, 2020.

Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

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Community Board 7, Queens, recommends approval of this application.

## I.

The Premises are located at the southeast corner of Maple Avenue and Main Street, partially in an R6 (C1-2) zoning district and partially in an R6 zoning district, in Queens. With approximately 211 feet of frontage along Maple Avenue, 170 feet of frontage along Main Street, 39,096 square feet of lot area, they are improved with an existing two-story commercial building on Lot 1 and an open parking lot on Lot 3.

The Board has exercised jurisdiction over the Premises since May 11, 1954, when, under BSA Calendar Number 889-53-BZ, the Board granted a variance for a five-year term to allow the unbuilt upon portion of the Premises to be occupied for the transient parking of motor vehicles belonging to employees and patrons on condition that the Premises be leveled substantially on the grade of Maple Avenue and be surfaced with clean gravel or steam cinders and treated with a binder and properly rolled; that there be erected on all interior lot lines a woven wire fence of the chain-link type not less than 5 feet 6 inches in height; that a similar fence be erected along the street line of Maple Avenue except for an opening not more than 14 feet in width, which must be fitted with gates of similar construction as the fence and which must be kept closed except when the lot is being used in connection with the store buildings adjoining; that opposite such opening there may be a curb cut not over 15 feet in width; that the sidewalk and curbing in front of the Premises be restored or repaired to the satisfaction of the Borough President; that during the variance term, the Premises be occupied for no other use and no building be erected thereon; that cars be parked in such a way for there to be adequate lanes for entrance and exit at all times; that any retaining walls needed to protect adjoining properties be constructed and maintained by this owner; that the curb cut for entrance to Maple Avenue to the unloading space, as shown, may be maintained; that such portable fire-fighting appliance be kept in a convenient location in the adjoining building as the Fire Commissioner direct; that signs be restricted to one sign not over 10 square feet in area attached to the fence advertising the parking use for patrons and employees only and such other information as may be required by the Commissioner of Licenses; and that such sign not be illuminated and not extend beyond the building line. The Board subsequently amended and extended the variance in 1959, 1965, 1970, 1975, 1980, and 1985.

On September 12, 2017, under BSA Calendar Number 322-13-BZ, the Board denied an application to reinstate the variance, citing the applicant's lack of responsiveness to the Board's request for physical improvements to the Premises, continued accrual of DOB violations, failure to timely pay outstanding fines and failure to install the stackers needed to provide require parking for the enlarged commercial use at the Premises.

## II.

The applicant now proposes to develop a 20-story

mixed-use building with a total of 100,436 square feet of floor area (94,523 square feet residential, 4,841 square feet community facility, and 1,073 square feet commercial) that would rise to a building height of 215.61 feet above curb level (270.5 feet NAVD88) and a height of parapet wall atop the mechanical bulkhead of 242.11 feet (297 feet NAVD88) (the "Proposed Building"). Adjacent to the Proposed Building, the applicant intends to construct an as-of-right 9-story community-facility building that would comply with all applicable zoning regulations.

The Proposed Building could not be constructed as of right because the Premises are located within a "flight obstruction area" for LaGuardia Airport and because the Proposed Building would penetrate LaGuardia Airport's 1:50 inner approach surface and 1:40 outer approach surface. Z.R. § 61-21.

## III.

The Zoning Resolution vests the Board with discretion to "permit the construction, *enlargement*, or reconstruction of a *building or other structure* in excess of the height limits established under Sections [61-21](#) (Restriction on Highest Projection of Building or Structure) or [61-22](#) (Permitted Projection Within any Flight Obstruction Area)." Z.R. § [73-66](#) (emphasis in original to indicate defined terms).

### A.

As a preliminary matter, the applicant must provide "a site plan, with elevations, showing the proposed *building or other structure* in relation to such maximum height limits." *Id.* The record reflects, and the Board acknowledges, that the applicant has done so in this application.

### B.

The Board also notes that this application has been "refer[red] . . . to the Federal Aviation Administration for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways." *Id.*

Having reviewed application materials for construction of the Proposed Building, the Federal Aviation Administration issued five Determinations of No Hazard to Air Navigation on January 13, 2020, under Aeronautical Study No. 2019-AEA-12168-OE at latitude 40-45-19.40N, longitude 73-49-41.10W, 53 feet site elevation, 243 feet above ground level, and 296 feet above mean sea level ("Building Point 1"), under Aeronautical Study No. 2019-AEA-12169-OE at latitude 40-45-20.30N, longitude 73-49-38.70W, 55 feet site elevation, 244 feet above ground level, and 299 feet above mean sea level ("Building Point 2"), under Aeronautical Study No. 2019-AEA-12170-OE at latitude 40-45-18.70N, longitude 73-49-37.70W, 58 feet site elevation, 245 feet above ground level, and 303 feet above mean sea level ("Building Point 3"), under Aeronautical Study No. 2019-AEA-12171-OE at latitude 40-45-18.20N, longitude 73-49-38.70W, 58 feet site elevation, 243 feet above ground level, and 301 feet above mean sea level ("Building Point 4"), and under Aeronautical Study No. 2019-AEA-12172-OE at latitude 40-45-17.70N, longitude 73-49-40.50W, 54 feet site elevation, 246 feet above ground level, and 300 feet above mean sea level ("Building Point

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8”) (collectively, the “FAA No Hazard Determinations”). The reviewed materials include a survey and five study points at the corners of the zoning lot keyed to maximum heights in NAVD88, and the applications were also circulated to the Port Authority of New York and New Jersey.

The FAA No Hazard Determinations conclude that the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities” based on an “aeronautical study [that] considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures.”

However, the FAA No Hazard Determinations also specify the following conditions:

As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, red lights - Chapters 4,5(Red),&12.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or: . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2) . . .

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks,

etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA. . . .

Cranes to be used for project should be e-filed with the FAA at least 120 days prior to exceeding the greatest structure AGL height to prevent construction delays. As well, notification by email directly to the FAA Specialist assigned to the state of NY should occur when any crane is e-filed above the building height with the anticipation a 1A survey will be required for the crane(s).

In response to Board questions at hearing, the applicant clarifies that, under “FAA Advisory Circular 150/5300-16B, the FAA requires all Airport Layout Plan elevation points to be referenced to NAVD88,” and the surveys submitted to the Federal Aviation Administration all referenced NAVD88 vertical datum.

Accordingly, the record reflects, and the Board acknowledges, that the Federal Aviation Administration has issued a satisfactory report that the Proposed Building “will [not] constitute a danger to the safety of air passengers or disrupt established airways.” Z.R. § 73-66.

## C.

The applicant submits that the Proposed Building “would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed *building*, to other *buildings* in the vicinity or to the safety of air passengers, and would not disrupt established airways.” Z.R. 73-66.

In support of this contention, the applicant notes the FAA No Hazard Determinations’ conclusion that the Proposed Building “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities.” The applicant submits that this conclusion reflects a thorough technical review by an expert “federal agency with exclusive jurisdiction over commercial airports and the flight space that surrounds them”—which makes the Federal Aviation Administration “uniquely qualified to make determinations about potential hazards to airports, air space, air passengers and nearby structures.”

Additionally, the Port Authority of New York and New Jersey states, by letter dated March 17, 2020, that it has no additional comments to the FAA No Hazard Determinations but “request[s] that all conditions stated in the determination be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. . . . [S]eparate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceeds the overall heights as described in the determinations prior to any construction. Studies for this equipment should be filed at least 90-120 days prior to the start of operations.”

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Accordingly, the Board believes it appropriate to defer to the Federal Aviation Administration's determinations as to any potential hazards posed by proposed construction, and the Board finds that the Proposed Building would not constitute a hazard to its occupants, to other buildings in the vicinity, or to the safety of air passengers and would not disrupt established airways.

## D.

In addition to the foregoing, this application is subject to and guided by Section 73-01 through 73-04 of the Zoning Resolution, including the general findings of Section 73-03.

The applicant submits that the advantages to the community from construction of the Proposed Building outweigh any disadvantages. The applicant states that there would be no hazards associated with the increased height to be authorized by this application, as reflected in the FAA No Hazard Determinations.

The applicant also studied building heights in the vicinity, finding that building heights are highly varied—ranging from two- to six- stories to buildings similar to or taller than the Proposed Building. For instance, there are 18 buildings nearby that exceed 100 feet in height, 6 buildings over 150 feet in height, and 3 buildings over 200 feet in height with heights of 210 feet, 227 feet, and 229 feet, which comport with the height of the Proposed Building at 215.61 feet.

The applicant posits that the Proposed Building would also provide advantages to the community by replacing an open parking lot with a mixed-use development that would enhance the pedestrian experience, create new employment and residential opportunities, and provide community-facility space.

The Board, however, notes that its review herein is limited to the request for an increase in height above that allowed as of right in the vicinity of airports. Additionally, all conditions contained in the FAA No Hazard Determinations have been adopted and incorporated into the Board's grant herein, so any act violating the FAA No Hazard Determinations further constitutes a violation of this decision and the Zoning Resolution.

Accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantages to the community at large due to this special permit is outweighed by the advantages to be derived by the community, and the proposed project will not interfere with any pending public improvement project.

## IV.

With respect to environmental review, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA082Q, dated April 15, 2020.

The Department of Environmental Protection ("DEP") states, by letter dated October 28, 2020, that the October 2020 Remedial Action Plan (RAP) and the September 2020 Construction Health and Safety Plan (CHASP) for the proposed project are acceptable on condition that the proposed vapor barrier system consisting of Grace Preprufe 300R/160R and Grace Bituthene be used unless an

amendment is approved by DEP. Additionally, at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report shall be submitted for DEP review and approval for the proposed project. The P.E. certified Remedial Closure Report shall indicate that all remedial requirements have been properly implemented (i.e., transportation/disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations; installation of vapor barrier; and installation of an active SSDS, etc.). DEP states, by letter dated December 14, 2020, that the November 2020 RAP amendment proposes the installation of a vapor barrier system consisting of 20-mil Raven VaporBlock Plus, VaporSeal Tape, Butyl Seal Tape, and Pour-N-Seal epoxy. All vapor barriers will be installed in accordance with manufacturer's recommendations. The proposed vapor barrier system replaces the previously approved Grace Preprufe 300R, Grace Preprufe 160R, and Grace Bituthene vapor barrier materials. DEP finds the November 2020 RAP amendment for the proposed project acceptable.

## V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-66 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-66 and 73-03 to *permit*—partially in an R6 (C1-2) zoning district and partially in an R6 zoning district—the development of a 20-story mixed-use building that would not comply with height restrictions applicable near major airports (Z.R. § 61-21); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked "Received December 14, 2020"—thirteen (13) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum building height of 215.61 feet above curb level (270.5 feet NAVD88) and a maximum height of parapet wall atop the mechanical bulkhead 242.11 feet (297 feet NAVD88), as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-35-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 5, 2025;

THAT the proposed vapor barrier system consisting of 20-mil Raven VaporBlock Plus, VaporSeal Tape, Butyl Seal Tape, and Pour-N-Seal epoxy 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 for DEP review and approval for the proposed

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project; the P.E. certified Remedial Closure Report shall indicate that all remedial requirements have been properly implemented (i.e., transportation/disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations; installation of vapor barrier; and installation of an active SSDS, etc.);

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. 2019-AEA-12168-OE, 2019-AEA-12169-OE, 2019-AEA-12170-OE, 2019-AEA-12171-OE, and 2019-AEA-12172-OE, issued January 13, 2020, shall be followed, including:

As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, red lights - Chapters 4,5(Red),&12.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or: . . . Within 5 days after the construction reaches its greatest height (7460-2, Part 2) . . .

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA. . . .

Cranes to be used for project should be e-filed with the FAA at least 120 days prior to exceeding

the greatest structure AGL height to prevent construction delays. As well, notification by email directly to the FAA Specialist assigned to the state of NY should occur when any crane is e-filed above the building height with the anticipation a 1A survey will be required for the crane(s).

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 15, 2020.

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## **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.**

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 8-9, 2021, at 10 A.M., for decision, hearing closed.

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## **2019-24-BZ**

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over March 8-9, 2021, at 10 A.M., for continued hearing.

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## 2019-35-BZ

APPLICANT – Eric Palatnik, P.C. for Leonid Berlinkov, owner.

SUBJECT – Application February 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area requirements (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 235 Beaumont Street, Block 8740, Lot 0087, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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## 2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over March 8-9, 2021, at 10 A.M., for adjourned hearing.

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## 2019-203-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over April 26-27, 2021, at 10 A.M., for adjourned hearing.

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## 2019-205-BZ

APPLICANT – Goldman Harris LLC, for Jean’s Place Housing Development Fund Corporation, owner.

SUBJECT – Application August 16, 2019 – Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 485 Van Sinderen Avenue, Block 3799, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5  
Negative:.....0

THE VOTE TO REOPEN 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 8-9, 2021, at 10 A.M., for reopen hearing.

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## 2019-280-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for SUBJECT – Application November 1, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (*SLT*) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies’ Mile Historic District.

PREMISES AFFECTED – 137 Fifth Avenue, Block 00849, Lot 0002, Borough of Manhattan.

### COMMUNITY BOARD #5M

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 22-23, 2021, at 10 A.M., for decision, hearing closed.

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## 2020-61-BZ

APPLICANT – Sheldon Lobel, P.C., for East Harlem HS LLC, owner; East Harlem Scholars Academy Charter School, lessee.

SUBJECT – Application July 21, 2020 – Variance (§72-21) to permit the development of a school (UG 3) (*East Harlem Scholars Academy Charter School*) contrary to underlying bulk requirements. R7A, C2-5/R8A zoning districts.

PREMISES AFFECTED – 342-346 East 104<sup>th</sup> Street, Block 1675, Lot(s) 30, 31, 32, 33, Borough of Manhattan.

### COMMUNITY BOARD #11M

**ACTION OF THE BOARD** – Laid over January 28-29, 2021, at 10 A.M., for continued hearing.

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**REGULAR MEETING  
MONDAY-TUESDAY AFTERNOON  
DECEMBER 14-15, 2020, 2:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, Commissioner Ottley-Brown and Commissioner Scibetta.

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**2020-12-BZ**

APPLICANT – Law Office of Jay Goldstein, for Freewythe LLC, owner; Viking Panda LLC d/b/a Row House, lessee.  
SUBJECT – Application February 19, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Row House Williamsburg) located in the cellar and a portion of the first floor of an existing building contrary to ZR §42-10. M1-4/R6-A & MX-8 zoning districts.

PREMISES AFFECTED – 356 Wythe Avenue (354-360 Wythe Avenue, 45-51 South 3 Street, 60-62 South 2 Street), Block 2415, Lot(s) 22, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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**2020-33-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner; Blink 88<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 437 88<sup>th</sup> Street, Block 6050, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

**ACTION OF THE BOARD** – Laid over June 14-15, 2021, at 10 A.M., for postponed hearing.

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**2020-72-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, for LTF Club Operations, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district.

PREMISES AFFECTED – 85 Jay Street, Block 54, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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 January 28-29, 2021, at 10 A.M., for decision, hearing closed.

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**CORRECTION: This resolution adopted on July 23, 2019, under Calendar No. 2018-140-BZ, is hereby corrected to read as follows:**

**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.

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 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



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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 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*<sup>1</sup>), 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

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<sup>1</sup> Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 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 20, 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

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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

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;

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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.

**\*The resolution has been amended. Corrected in Bulletin No. 49-51, Vol. 105, dated December 25, 2020.**